

Exhibit I

Deposition Transcript of Mr. Edward Gray Bishop, III

In The Matter Of:

Kayla Gore v.

William Byron Lee

Edward Gray Bishop

May 20, 2020



Min-U-Script® with Word Index

1 **UNITED STATES DISTRICT COURT**
2 **MIDDLE DISTRICT OF TENNESSEE**
3 **NASHVILLE DIVISION**

4 -----X

5 **KAYLA GORE; JAIME COMBS; :**

6 **L.G.; AND K.N., :**

7 **Plaintiffs, : Case No.**

8 **v. : 3:19-CV-00328**

9 **WILLIAM BYRON LEE, in his official :**

10 **capacity as Governor of the State of :**

11 **Tennessee; and LISA PIERCEY, in her :**

12 **official capacity as Commissioner of the :**

13 **Tennessee Department of Health, :**

14 **Defendants. :**

15 -----X

16 **REMOTE VIDEOTAPED DEPOSITION OF**

17 **EDWARD GRAY BISHOP**

18 **Tennessee**

19 **Wednesday, May 20, 2020**

20 **1:05 p.m.**

21

22 **Job No.: 2020-85187**

23 **Pages: 1 - 91**

24 **STENOGRAPHICALLY REPORTED BY:**

25 **GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR**

1 Deposition of EDWARD GRAY BISHOP, held
2 remotely, via videoconference at:

3
4
5 Tennessee
6
7
8

9 Pursuant to agreement, before Giselle
10 Mitchell-Margerum, Registered Professional Reporter,
11 Certified Reporting Instructor, Licensed Court Reporter
12 (TN), Certified Court Reporter (GA), and Notary Public
13 (Washington, D.C.).
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1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFFS:

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14

15

16 ALSO PRESENT:

17 JOHN WINEMILLER

18 SAMONEH KADIVAR

19 SASHA BUCHERT

20 DIANNA SHEW

21 SARA SEDGWICK

22 SUNG JAE LIM

23 KEVIN MONTGOMERY

24

25

W I T N E S S I N D E X**Witness Page****EDWARD GRAY BISHOP (sworn)7****Examination by OMAR GONZALEZ-PAGAN8**

E X H I B I T I N D E X

1		
2		
3	No. Description Page	
4		
5	Exhibit 2	Defendant's Expert20
6	Disclosure	
7	Exhibit 3	Declaration of Edward Gray ...21
8	Bishop	
9	Exhibit 4	Handbook on Birth27
10	Registration and Fetal Death	
11	(Stillbirth) Reporting	
12	Exhibit 5	*CONFIDENTIAL* --41
13	Certificate of Live Birth	
14	Exhibit 6	*CONFIDENTIAL* --43
15	Statistical Report	
16	Exhibit 7	*CONFIDENTIAL* --53
17	Certificate of Live Birth	
18	Exhibit 8	*CONFIDENTIAL* --58
19	Certificate of Live Birth	
20	Exhibit 1	Amended Complaint for68
21	Declaratory and Injunctive Relief	
22	Exhibit 9	Tennessee Code Annotated69
23	(Section 68-3-202)	
24	Exhibit 10	Model State Vital71
25	Statistics Act and Regulations	

1 **Exhibit 11 Printout from website of75**
2 **NAPHSIS**

3 **Exhibit 12 A Report of the NAPHSIS76**
4 **Registration Committee**

5 **Exhibit 13 Printout from website of81**
6 **Tennessee Vital Records Office**

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1 P R O C E E D I N G S

2 EDWARD GRAY BISHOP

3 having been duly sworn testified as follows:

4 MR. PAGAN: Okay. Thank you,
5 Ms. Mitchell. If we could just have
6 people enter their appearances?

7 This is Omar Gonzalez-pagan,
8 representing the plaintiffs. Also
9 present are John Winemiller,
10 Sasha Buchert, and Samoneh Kadivar, who
11 are all representing the plaintiffs.

12 MR. JONES: And this is
13 Matt Jones, with the Tennessee Attorney
14 General's Office, representing the
15 defendants. I'm also joined by
16 Dianna Shew and Sara Sedgwick.

17 MR. PAGAN: Thank you, Matt.

18 And, just for the record, this
19 deposition is being taken via
20 videoconference, by agreement of the
21 parties, and it is not being video
22 recorded. And all objections are
23 reserved, except as to form.

24 MR. JONES: Okay.

25

1 EXAMINATION BY MR. GONZALEZ-PAGAN:

2 Q. All right. Mr. Bishop, thank you
3 for being here today. As I mentioned, my name
4 is Omar Gonzalez-Pagan, and I represent the
5 plaintiffs in this matter.

6 Before we get started, I would
7 just like to go over a few ground rules for
8 this deposition, which will make it easier for
9 everybody.

10 Do you understand that you are
11 under oath today?

12 A. I do.

13 Q. Okay. And the oath that you just
14 took is the same oath that you would take in a
15 court of law. Do you understand that you are
16 testifying under penalty of perjury?

17 A. I do.

18 Q. Okay. It's important that we do not
19 speak over each other, particularly in this
20 videoconference setting. So that the court
21 reporter is able to take down what each of us
22 says. So, please let me finish a question
23 before you answer, and I will do the same.

24 It is also important that we
25 answer questions verbally. So, no nodding of

1 the head, or shaking your head.

2 Do you understand what I just
3 stated?

4 A. I do.

5 Q. Okay. If you do not understand
6 something that I ask, please let me know and I
7 will try to rephrase it for you. If you
8 answer my question, I will assume that you
9 understood it.

10 Is that agreed?

11 A. Agreed.

12 Q. And, occasionally, one of the
13 lawyers may make an objection to a question
14 that is asked. If an -- objections are made
15 for the record only. You must answer the
16 question that has been asked, unless you're
17 instructed not to by the attorney in this
18 case; Matt Jones.

19 Is that understood?

20 A. It is.

21 Q. Okay. Also, if you need to take a
22 break, please let me know. We will
23 accommodate it. My only request is that if
24 there is a question pending, that you answer
25 the question before we take any breaks.

1 Understood?

2 A. Yes.

3 Q. Okay. Are you under any medications
4 that would prevent you from giving true,
5 accurate, and complete testimony today?

6 A. No.

7 Q. Is there any reason why you cannot
8 give true, accurate, and complete testimony
9 today?

10 A. None.

11 Q. Okay. Throughout this deposition, I
12 may refer to the plaintiffs in this matter;
13 Kayla Gore, Jaime Combs, L.G., and K.N. are
14 transgender women.

15 As such, we will be referring
16 to them using "she," "her," "her" pronouns,
17 and honorifics, such as "Ms. Gore," for
18 example. We ask that you do the same.

19 Is that understood?

20 A. Yes.

21 Q. Great. All right. What is your
22 full name?

23 A. Edward Gray Bishop III.

24 Q. And where do you work?

25 A. I work for the Division of Vital

1 Records and Statistics for the Department of
2 Health for the State of Tennessee.

3 Q. Okay. And what is your current
4 title?

5 A. I am the Director of Vital Records
6 and Statistics and the State Registrar for the
7 State of Tennessee.

8 Q. Is that one position or two?

9 A. It's one position.

10 Q. Okay. Thank you.

11 A. Two titles. One position.

12 Q. Have you ever been deposed before?

13 A. No.

14 Q. Okay. Have you ever testified at a
15 trial or a hearing before?

16 A. Yes.

17 Q. How many times?

18 A. One.

19 Q. What was the case about?

20 A. A delayed birth file.

21 Q. And what was your role in that case?

22 A. Representing the Office of Vital
23 Records.

24 Q. Was the Office of Vital Records a
25 party? Or were you just acting as a witness?

1 A. A party.

2 Q. Was it the plaintiff or the
3 defendant?

4 A. Defendant.

5 Q. Okay. Can you please tell us the
6 sum -- the substance of your testimony? A
7 summary?

8 A. So, basically, the individual was
9 wanting to put a delayed certificate on file.
10 She had never had a birth certificate. And
11 she had produced no evidence that she was born
12 in the state, or to the parents that she said
13 she was.

14 Q. Okay. Thank you. When did you
15 first learn about this case, for which you are
16 being deposed today?

17 A. An estimate would be sometime last
18 year.

19 Q. Could you approximate around what
20 time of the year? Was it summer? Spring?

21 A. I could not.

22 Q. How did you learn about the case?

23 A. From my general counsel.

24 MR. JONES: I was going to
25 interpose an objection as to anything

1 that calls for attorney/client
2 communications.

3 MR. PAGAN: Understood.

4 BY MR. PAGAN:

5 Q. Without disclosing the substance of
6 any conversations you may have had with
7 counsel for the defendants, or with the
8 general counsel of the Office of Vital
9 Records, when did you first speak with counsel
10 for the defendants with regards to this case?

11 MR. JONES: Object to form.

12 MR. PAGAN: Let me rephrase.

13 BY MR. PAGAN:

14 Q. When did you first speak with
15 attorneys from the Tennessee Attorney
16 General's office, with regards to this case?

17 A. I don't have a specific date.

18 Q. Could you approximate?

19 A. I could not.

20 Q. Was it last year?

21 A. If I had to give an estimate, yes;
22 it would be last year.

23 Q. How many times have you spoken
24 for -- with counsel for the defendants?

25 A. I could not give an estimate on that

1 either.

2 Q. More than a dozen times?

3 A. Are you counting emails, or
4 verbally?

5 Q. Let's just stick to verbally.

6 A. I would say close to 12; yes.

7 Q. How many times have you communicated
8 electronically with counsel for the
9 defendants, regarding this matter?

10 A. I could not estimate that either.

11 Q. What did you do to prepare for
12 today's deposition?

13 A. Just had a quick call last night
14 with my counsel, and covered a few items.

15 Q. Did you review any documents?

16 MR. JONES: I'm going to
17 object, to the extent of any
18 conversations that were had with counsel.
19 But he can answer the question regarding
20 documents.

21 MR. PAGAN: I'll just re-ask my
22 question, Mr. Bishop.

23 BY MR. PAGAN:

24 Q. Did you review any documents?

25 A. Did I review any documents?

1 Q. Yes.

2 A. Yes.

3 Q. What were those documents?

4 A. One was some numbers that I'd put
5 together, for the number of birth certificates
6 that we were looking to provide. And then I
7 looked at some of the exhibits that were
8 coming in about an hour ago.

9 Q. Okay. Thank you. Have you reviewed
10 the amended complaint in this case?

11 A. I have not.

12 Q. Have you reviewed the expert report
13 of Dr. Randi C. Ettner in this matter?

14 A. I have not.

15 Q. Have you reviewed the expert report
16 of Dr. Shayne Sebold Taylor in this matter?

17 A. I have not.

18 Q. Have you reviewed the expert
19 declaration of Dr. Ettner in this matter?

20 A. I have not.

21 Q. Have you reviewed the expert
22 declaration of Dr. Taylor in this matter?

23 A. I have not.

24 Q. How long have you been the State
25 Registrar for Tennessee?

1 A. Little over two years.

2 Q. As State Registrar and Director of
3 the Office of Vital Records, what are your
4 responsibilities?

5 A. To put on file any vital event in
6 the state of Tennessee. To maintain those
7 records for the time stated in the statute;
8 and we also issue copies of these vital
9 records.

10 Q. Are all the vital records -- scratch
11 that.

12 Are all birth certificates
13 issued by your office? Or are they issued by
14 local vital record registers?

15 A. Yes.

16 Q. Let me clarify that. Are birth
17 certificates issued by other entities, other
18 than your office?

19 A. Yes.

20 Q. Okay. Do you provide guidance with
21 regards to the completion and maintenance of
22 birth records to your office?

23 A. The Office of Vital Records?

24 Q. Yes.

25 A. Those -- those maintenances are done

1 by statute.

2 Q. Okay. Do you provide guidance as to
3 the completion and maintenance of birth
4 records, to the other entities that complete
5 birth certificates?

6 A. Those other entities do not maintain
7 the records. Only the Office of Vital
8 Records.

9 Q. Okay. Let me re-ask the question
10 differently. Do you provide guidance
11 regarding the completion of birth records to
12 the other entities that complete birth records
13 for the Office of Vital Records?

14 A. We provide training; yes.

15 Q. What is that training composed of?

16 A. Usually, video teleconference. And
17 we have some CBTs built. Computer-Based
18 Training.

19 Q. Okay. Thank you. Who appointed you
20 as State Registrar?

21 A. The Commissioner of the Department
22 of Health.

23 Q. Can you explain to me the process by
24 which you came to be appointed as State
25 Registrar?

1 MR. JONES: Object to form.

2 Q. You may answer.

3 A. I was just -- it was an interview
4 process.

5 Q. Okay. Prior to becoming State
6 Registrar, where were you employed?

7 A. With the Department of Health.

8 Q. In what capacity?

9 A. I was a Senior Project Manager.

10 Q. And before that, it's my
11 understanding that you served in the
12 United States Air Force. Is that right?

13 A. That is correct.

14 Q. Thank you for your service.

15 Now, in terms of education, you
16 have a degree in Information System
17 Technologies. Is that right?

18 A. I have an associate's degree; yes.

19 Q. And that's from the Community
20 College of the Air Force in Alabama?

21 A. Correct.

22 Q. And you also appear to have a
23 Bachelor's Degree in Business Administration.
24 Is that right?

25 A. Correct.

1 Q. And that's from the University of
2 Management and Technology?

3 A. Correct.

4 Q. Okay. Do you possess any other
5 undergraduate or graduate degrees?

6 A. I do not.

7 Q. Okay. You do not possess a degree
8 in medicine. Is that correct?

9 A. That is correct.

10 Q. You do not possess a degree in
11 psychology. Is that correct?

12 A. That is correct.

13 Q. You do not possess a degree in
14 biology. Is that correct?

15 A. That is correct.

16 Q. Okay. You have been designated by
17 the defendants as an expert in this case. Is
18 that right?

19 A. That's correct.

20 Q. Have you ever served as an expert
21 witness before?

22 A. I have not.

23 Q. Besides your regular salary as State
24 Registrar and Director of the Office of Vital
25 Records, are you being compensated for your

1 testimony here today?

2 A. I'm not.

3 Q. What are your opinions in this case?

4 A. I don't have any opinions.

5 Q. You have stated you have no
6 opinions. Did you provide an expert
7 declaration in this case?

8 A. I did.

9 Q. Can you tell me what is the
10 testimony you would provide in the case?

11 MR. JONES: Object to form.

12 Q. If you can open what has been
13 premarked as Exhibit 2? And I'm just going to
14 share it on the screen; or try to.

15 (Exhibit 2 marked for identification)

16 Q. Okay. Can you see the document that
17 I'm sharing on the screen, Mr. Bishop?

18 A. I can.

19 Q. Okay. Have you ever seen this
20 document before?

21 A. I have.

22 Q. What is it?

23 A. It is my expert disclosure.

24 Q. Okay. It contains a description of
25 your expected testimony. Is that correct?

1 A. I'm sorry? Can you repeat that?

2 Q. It contains a description of your
3 expected testimony in this case. Is that
4 correct?

5 A. Correct.

6 Q. And you also filed a declaration in
7 this case. Is that right?

8 A. I would have to defer to counsel on
9 that one. I'm pretty sure.

10 Q. Okay. I'm going to show you what's
11 been premarked as Exhibit 3.

12 (Exhibit 3 marked for identification)

13 Q. Can you see on the screen, the
14 document that I'm sharing?

15 A. Yes.

16 Q. Okay. Have you ever seen this
17 document before?

18 A. Yes.

19 Q. Okay. What is it?

20 A. It's my declaration.

21 Q. Okay. And is that your signature on
22 the second page of the document?

23 A. It is.

24 Q. Okay. Is your declaration -- is
25 your declaration accurate, in all respects?

1 A. Yes.

2 Q. Is your declaration complete, in all
3 respects?

4 MR. JONES: Object to form.

5 Q. You may answer.

6 A. Can you repeat?

7 Q. Is your declaration complete, in all
8 respects?

9 MR. JONES: Same objection.

10 Q. You may answer, Mr. Bishop.

11 A. I'm sorry? Can you repeat?

12 Q. All right. Is your declaration
13 complete --

14 A. I'm --

15 Q. -- in all respects?

16 A. Can you reword that? I don't
17 understand the word, "respects."

18 Q. Sure. Is there anything you want to
19 change in your declaration?

20 A. No.

21 Q. Is there anything you want to add to
22 your declaration?

23 A. No.

24 Q. Is there anything you want to delete
25 from your declaration?

1 A. No.

2 Q. Did you purposely leave anything out
3 of your declaration?

4 MR. JONES: Object to form.

5 Q. You may answer.

6 A. No.

7 Q. Do you feel you need to do any
8 additional work relating to your declaration?

9 MR. JONES: Object to form.

10 Q. You may answer.

11 A. No.

12 Q. Is your declaration a complete
13 statement of your expected testimony in this
14 case?

15 MR. JONES: Object to form.

16 Q. You may answer.

17 A. Can you repeat?

18 Q. Is your declaration a complete
19 statement of the testimony -- of your
20 testimony in this case?

21 MR. JONES: Same objection.

22 Q. You may answer.

23 A. Yes.

24 Q. Do you believe your declaration
25 contains all the information for the Court to

1 understand the work that you have done in this
2 case?

3 A. I'm sorry. Can you repeat that?

4 Q. Do you believe that your declaration
5 contains all the information for the Court to
6 understand all the work you have done in this
7 case?

8 MR. JONES: Object to form.

9 Q. You may answer.

10 A. Can you reword that, when you say
11 "work I've done in the case?"

12 Q. Sure. Do you believe that your
13 declaration contains all the information for
14 the Court to evaluate your testimony in this
15 case?

16 MR. JONES: Object to form.

17 MR. PAGAN: All right. I'm
18 going to rephrase it.

19 BY MR. PAGAN:

20 Q. Mr. Bishop, do you believe your
21 declaration provides the Court with all the
22 information it needs, from you, in order to
23 decide this case?

24 MR. JONES: Object to form.

25 Q. You may answer.

1 A. Can you repeat?

2 Q. Sure. Do you believe that your
3 declaration provides the Court with all the
4 information it needs to decide this case?

5 MR. JONES: Object to form.

6 Q. You may answer.

7 A. I can't say that I can speak for the
8 Court.

9 Q. Having now reviewed the reports and
10 declarations of Dr. Ettner and Dr. Taylor, are
11 you offering an opinion in response to their
12 declarations?

13 A. I have not reviewed those documents.

14 Q. Okay. You are not offering an
15 opinion about the testimony from Dr. Ettner
16 and Dr. Taylor. Is that correct?

17 A. That's correct.

18 Q. You're also not offering an opinion
19 on the etiology of sex. Is that correct?

20 A. Can you rephrase that?

21 Q. Sure. You're also not offering an
22 opinion from a med -- on the medical
23 scientific understanding of what determines a
24 person's sex.

25 Is that correct?

1 A. I'm not offering an opinion.

2 Q. You are also not offering an opinion
3 on the medical scientific understanding of
4 gender identity. Is that correct?

5 A. That is correct.

6 Q. You are also not offering an opinion
7 on the medical and scientific understanding of
8 gender dysphoria. Is that correct?

9 A. That is correct.

10 Q. You are also not offering an opinion
11 on the process of gender transition for a
12 transgender person. Is that correct?

13 A. That is correct.

14 Q. Okay. Is a birth certificate a form
15 of an identification document?

16 MR. JONES: I'm sorry, Omar.

17 You broke up just a little bit there. I
18 didn't catch all those words.

19 MR. PAGAN: Thanks, Matt.

20 BY MR. PAGAN:

21 Q. Is a birth certificate a form of
22 identification document?

23 A. It is used as such.

24 Q. Okay. I'm showing you on the screen
25 what has been premarked as Exhibit 4, which

1 was provided to us by defendant's counsel.

2 (Exhibit 4 marked for identification)

3 Q. Have you ever seen this document
4 before?

5 MR. JONES: I'm not -- I'm not.

6 MR. PAGAN: Sorry, Matt? You
7 were saying?

8 MR. JONES: I'm not seeing an
9 exhibit shown. I'm seeing your screen,
10 which shows a lot of different files on
11 it.

12 MR. WINEMILLER: You are in
13 your file folder.

14 MR. PAGAN: Okay. Let me try
15 that again.

16 MR. JONES: Omar, he should
17 have the exhibits there with him. If we
18 can just give him the name of the
19 document, he might be able to look at it.

20 MR. PAGAN: Sure. Right.

21 BY MR. PAGAN:

22 Q. Mr. Bishop, you were provided with
23 an exhibit that was premarked as "Exhibit 4."

24 A. Yes.

25 Q. It is a handbook on birth

1 registrations. Do you have that document with
2 you?

3 A. I have it up; yes.

4 Q. Okay. Have you ever seen this
5 document before?

6 A. I have.

7 Q. Okay. What is it?

8 A. According to the title, it's our
9 "Handbook on Birth Registration and Fetal
10 Death Reporting."

11 Q. Okay. And this document was
12 published by -- in 2007, by the Office of
13 Vital Records. Is that right?

14 A. I could not speak to that.

15 Q. Okay. At the bottom of the cover
16 page, it says, "Tennessee Department of
17 Health, Policy Planning and Assessment Office
18 of Vital Records."

19 Is that right?

20 A. That's what's on the document; yes.

21 Q. Okay. And on the second page of the
22 PDF, it says:

23 "State of Tennessee Department
24 of Health, Nashville, Tennessee.
25 September 2007."

1 Is that right?

2 A. That's what it says; yes.

3 Q. Okay. And the Office of Vital
4 Records is the office that you now oversee.
5 Is that correct?

6 A. That is correct.

7 Q. Okay. If you turn to page two of
8 the document. Not of the PDF.

9 A. Okay.

10 Q. It's a page that begins,
11 "Introduction." Is that right where you are
12 at?

13 A. It is.

14 Q. Okay. In the first paragraph, under
15 the heading, "Importance of Birth
16 Registration," it says, in part:

17 "Throughout life, a person uses
18 his or her birth certificate to prove age,
19 parentage, and citizenship. Birth
20 certificates are needed for entrance to
21 school, voter registration, and for obtaining
22 a driver's license, marriage license,
23 passport, veterans' benefits, public
24 assistance, or social security benefits."

25 Did I read that correctly?

1 A. You did.

2 Q. Do you agree with that statement?

3 MR. JONES: Object to form.

4 Q. You may answer.

5 A. I can't -- those -- that is
6 referencing other departments. I cannot speak
7 for them.

8 Q. What other department is it
9 referencing?

10 A. You're looking at the DMV, the
11 county health -- the county clerk's, passport
12 office, Veterans Affairs, and the Social
13 Security Administration.

14 Q. Okay. This is a document that was
15 published by your -- by the office that you
16 now oversee. Is that right?

17 A. That, I cannot speak to. I was not
18 here at that time.

19 Q. As Director of the Office of Vital
20 Records, have you ever seen this document
21 before?

22 A. I have.

23 Q. Okay. Let me rephrase that. As
24 Director of the Office of Vital Records, have
25 you ever seen this document before this

1 litigation?

2 A. I have.

3 Q. Okay. Do you know whether it was
4 published by the Office of Vital Records?

5 A. I do not.

6 Q. Okay. Do you have any reason to
7 disagree whether it was published with the
8 Office of Vital Records?

9 MR. JONES: Object to form.

10 Q. Do you have any reason to disagree
11 that the Handbook on Birth Registration and
12 Fetal Death (Stillbirth) Reporting, that we
13 are discussing, was published by the Office of
14 Vital Records?

15 MR. JONES: Object to form.

16 Q. You may answer.

17 A. Can you repeat?

18 Q. Sure. Do you have any reason to
19 disavow this document as a publication from
20 the Office of Vital Records?

21 MR. JONES: Object to form.

22 A. I cannot speak to that.

23 Q. Okay. If you go to the very last
24 page of the PDF -- please let me know when
25 you're there.

1 A. I am.

2 Q. There's a box, and it states,
3 "Department of Health. Authorization No.
4 343391." Do you see that?

5 A. I do.

6 Q. Okay. And I read that correctly?

7 A. Can you -- "343391;" yes.

8 Q. Yes. All right. Would you agree
9 that this appears to be an authorized
10 publication of the Office of Vital Records
11 from 2007?

12 MR. JONES: Object to form.

13 Q. You may answer.

14 A. I cannot speak to that, since I
15 wasn't in the position at that time.

16 Q. Okay. All right. Would you agree
17 that a birth certificate is a form of
18 identification used for numerous purposes?

19 A. Yes.

20 Q. Do you agree that it is important
21 for a birth certificate to accurately reflect
22 the identity of a person?

23 A. Yes.

24 MR. JONES: Object to form.

25 Q. All right. If you can go back to --

1 to your declaration?

2 A. Can you tell me what exhibit that
3 was?

4 Q. It was marked as "Exhibit 3."

5 A. Okay.

6 Q. On paragraph C, you say:

7 "Tennessee birth certificates
8 merely record the sex of the child as reported
9 at birth."

10 Did I read that correctly?

11 A. You did.

12 Q. How is the sex of a child recorded?

13 MR. JONES: Object to form.

14 A. It's recorded on --

15 Q. You may answer.

16 A. It's recorded on a form by the
17 location of where the birth occurred.

18 Q. Okay. Who determines the sex of the
19 child?

20 MR. JONES: Object to form.

21 Q. You may answer.

22 A. The person certifying the birth.

23 Q. Earlier, you testified that your
24 office provides guidance with regards to the
25 completion of birth certificates. Is that

1 right?

2 A. That's correct.

3 Q. What is the guidance that you
4 provide with regards to the completion of the
5 item for "sex" on the birth certificate?

6 MR. JONES: Object to form.

7 Q. You may answer.

8 A. That data is filled out per the
9 medical records of the child.

10 Q. And how is the sex determined at the
11 time of birth?

12 MR. JONES: Object to form.

13 Q. You may answer.

14 A. That is not something I can answer.
15 I'm not a medical physician.

16 Q. Okay. Does the Office of Vital
17 Records provide any guidance on how to
18 determine the child's sex for the purposes of
19 the birth certificate?

20 A. It does not.

21 Q. Okay. If you can turn to
22 Exhibit 4 -- the handbook -- and go to page 34
23 of the handbook? Let me know when you're
24 there.

25 A. Thirty-four?

1 Q. Page 34 of the handbook; yes.

2 A. Okay. I'm on 34.

3 Q. Okay. Do you see there's a heading
4 titled, "Item 2. SEX?"

5 A. I do.

6 Q. Okay. On the first -- on the third
7 sentence of that section, it states:

8 "Purpose of item: This item
9 aids in identification of the child."

10 Did I read that correctly?

11 A. It does.

12 Q. Okay. Do you have any reason to
13 disagree with that statement?

14 MR. JONES: Object to form.

15 Q. You may answer.

16 A. I do not.

17 Q. Okay. Earlier, you testified that
18 it's important for a birth certificate to
19 accurately reflect the identity of a person.
20 Is that correct?

21 MR. JONES: Object to form.

22 Q. Is it important for a birth
23 certificate to accurately reflect the identity
24 of a person?

25 MR. JONES: Object to form.

1 Q. You may answer.

2 A. It's important to identify the data
3 elements of the child.

4 Q. Is a birth certificate a legal
5 record?

6 MR. JONES: Object to form.

7 Q. You may answer.

8 A. I cannot answer that. I don't know.

9 Q. Okay. Is a birth certificate a
10 medical record?

11 MR. JONES: Object to form.

12 Q. You may answer.

13 A. I don't know.

14 Q. Going back to page 34 of the
15 handbook; Exhibit 4.

16 A. Okay.

17 Q. For item two, I'm going to ask a
18 couple of questions. Please read the entire
19 item.

20 [Witness perused document]

21 A. Okay.

22 Q. In its entry for "Item 2. SEX," the
23 handbook on birth registration makes no
24 mention of genitalia. Is that correct?

25 A. That's correct.

1 Q. Okay. As State Registrar and
2 Director of the Office of Vital Records, you
3 are tasked with enforcing laws and regulations
4 pertaining to vital records in Tennessee.

5 Is that right?

6 A. That is correct.

7 Q. Please tell me what law or
8 regulation says that a child's sex is
9 determined by their genitalia.

10 MR. JONES: Object to form.

11 Q. You may answer.

12 A. Can you repeat?

13 Q. Please tell me what law or
14 regulation says that a child's sex is
15 determined by their genitalia?

16 MR. JONES: Object to form.

17 Q. You may answer.

18 A. I don't know of any.

19 Q. Thank you. All right. If we could
20 go to the third page of the handbook;
21 Exhibit 4? The third page of the PDF. It is
22 page (i) on the handbook.

23 A. Okay.

24 Q. Okay. This is a preface. Is that
25 right?

1 A. Correct.

2 Q. It states:

3 "This handbook was prepared by
4 the Tennessee Office of Vital Records for
5 reference use by facilities, certified nurse
6 midwives, certified professional midwives, and
7 other midwives as it relates to their duties
8 of completing the Tennessee Certificate of
9 Live Birth and Report of Fetal Death
10 (Stillbirth).

11 The handbook contains
12 information about the laws, rules, and
13 procedures pertaining to the preparation and
14 registration of the certificates and reports."

15 Did I read that correctly?

16 A. You did.

17 Q. Okay. Do you have any reason to
18 disagree with what I just read?

19 A. You read it correctly.

20 Q. Okay. Do you know whether this
21 handbook is still in use?

22 A. I do not.

23 Q. Okay. All right. Returning to page
24 34 of the handbook?

25 A. Okay.

1 Q. Middle sentence in the item two, for
2 "sex," it reads:

3 "If sex cannot be determined
4 after verification with medical records,
5 mother of child, informant, or other sources,
6 enter 'Unknown.' "

7 Did I read that correctly?

8 A. You did.

9 Q. Do you have any -- any reason to
10 disagree with that statement?

11 A. I do not.

12 Q. Besides medical records, what other
13 sources could be referred to in completing the
14 item for "sex" on a birth record?

15 MR. JONES: Object to form.

16 MR. PAGAN: You may answer.

17 And, Mr. Bishop, just a reminder that
18 unless otherwise instructed not to, you
19 should answer every question.

20 THE WITNESS: Okay.

21 MR. PAGAN: You don't have
22 to --

23 THE WITNESS: Okay. I'm having
24 a hard time hearing Matt a little bit.
25 So I'm sorry.

1 MR. PAGAN: No, it's not a
2 problem. I just want to make sure that
3 we're not unnecessarily pausing.

4 THE WITNESS: No problem.

5 MR. JONES: That's probably all
6 I'm going to say; "object to form." So
7 unless I speak longer...

8 THE WITNESS: Okay.

9 Can you repeat again, Omar? I'm
10 sorry.

11 MR. PAGAN: Sure. It's no
12 problem.

13 THE WITNESS: And you don't
14 have to reword it. I just want to make
15 sure --

16 MR. PAGAN: No, no --

17 THE WITNESS: -- I heard the
18 question correctly.

19 MR. PAGAN: Understood.

20 BY MR. PAGAN:

21 Q. Besides consulting a child's medical
22 records, what other sources should be looked
23 to in completing the item for "sex" on a birth
24 record?

25 MR. JONES: Object to form.

1 A. I don't know of any.

2 Q. Okay. All right. If you could go
3 to what's been premarked as "Exhibit 5?"

4 (Exhibit 5 marked for identification)

5 Q. Please tell me when you have that
6 up.

7 A. Okay.

8 Q. Okay. This is a birth
9 certificate -- I'm just going to read the
10 state file number; 141-106018. Is that
11 correct?

12 A. It is.

13 Q. Have you ever seen this document
14 before?

15 A. I've seen a birth certificate, but
16 not this individual child.

17 Q. Okay.

18 MR. JONES: And I just wanted
19 to remind counsel and the court reporter,
20 for her benefit, that this document we're
21 referring to is marked "Confidential."

22 So if there is any information read
23 off of this document, I'd ask that this
24 portion be -- be marked as "confidential"
25 as well.

1 MR. PAGAN: Yes, thank you,
2 Matt. Understood. And we will not be
3 asking questions about identifying
4 information of any person to which this
5 belongs to.

6 BY MR. PAGAN:

7 Q. And that is your electronic
8 signature on item 13. Is that right,
9 Mr. Bishop?

10 A. It is.

11 Q. Okay. And your signature is affixed
12 to all birth certificates issued while you're
13 being -- while you're State Registrar?

14 A. Yes. As of 20 -- yes; you're
15 correct. As of 2017.

16 Q. Okay. I'm just going to refer you
17 to "Item 2. SEX." It states, "Not yet."
18 What does it mean by that?

19 A. It means, "not yet determined."
20 It's an abbreviation. The system will not
21 allow much space or information in that box.

22 Q. So are there different forms in
23 which a child's sex may be recorded, besides
24 "male," "female," or "unknown?"

25 A. Please repeat that?

1 Q. Sure. Besides "male," "female," or
2 "unknown," are there any other forms by which
3 a child's sex may be recorded?

4 A. Can I ask a question?

5 Q. Yes.

6 A. You mean another form? Or another
7 identifier word?

8 Q. Thank you for the clarification.
9 Besides "male," "female," or "unknown," is
10 there any other term that is used for the
11 recording of a child's sex on a birth
12 certificate?

13 A. Yes. "Not yet determined."

14 Q. Okay. Are there any others?

15 A. Not that I can recall.

16 Q. Okay. Thank you. All right.

17 Moving on to Exhibit 6, let me know when you
18 have pulled it up.

19 (Exhibit 6 marked for identification)

20 MR. PAGAN: And, as per
21 counsel's objection, this is an exhibit
22 that has been produced by the defendants,
23 marked as "Confidential."

24 MR. JONES: Yes. Thank you.

25 THE WITNESS: Okay.

1 BY MR. PAGAN:

2 Q. Okay. Have you ever seen this
3 document before?

4 A. I don't recall.

5 Q. Okay. What is it?

6 A. Looks like a statistical report made
7 by the Office of Vital Statistics.

8 Q. And the Office of Vital Statistics
9 is the office that you oversee. Is that
10 right?

11 A. Correct.

12 Q. And it is dated November 20th
13 2019. Is that right?

14 A. That is correct.

15 Q. Okay. Do you know who prepared this
16 memorandum?

17 A. I don't see a name on it.

18 Q. Okay. Turning to the second page of
19 the exhibit, there is a "Table I," titled,
20 "Number of Births Occurring in Tennessee by
21 Sex, 1980 -- 2019."

22 Do you see that?

23 A. No. It says "2018."

24 Q. 2018. Thank you.

25 A. You're welcome.

1 Q. There's a table titled, "Number of
2 Births Occurring in Tennessee by Sex, 1980 --
3 2018." Is that right?

4 A. Correct.

5 Q. It appears to show the number of
6 births per year, by sex, for those years. Is
7 that correct?

8 A. Correct.

9 Q. And the table shows that there were
10 at least 43 children born during that time
11 period whose sex designation on the -- on
12 their birth certificate is unknown.

13 Is that correct?

14 A. That's what it's shown on page
15 three.

16 Q. Okay. Now, turning to "Table II,"
17 which is on page four -- all right.

18 I understand that the printout
19 of this is very small, so I'm going to try to
20 do a share of the screen again. And then,
21 hopefully, be able to zoom.

22 A. Okay. I'm going to leave it oblong,
23 rotated, and zoomed in.

24 Q. Great, thank you. In that case, the
25 table shows a list of birth certificates and

1 linked death certificates for which a child
2 was designated as "unknown" at birth.

3 Is that correct?

4 A. It's kind of hard to see. Hang on.
5 It's so small. Let me see if I can zoom
6 enough to read it.

7 Q. All right.

8 A. That's what it appears to be, based
9 on what I can see.

10 Q. Okay. It shows that a number of
11 children assigned as "unknown" at birth, had
12 their birth certificates be changed to have a
13 different sex designation.

14 Is that right?

15 MR. JONES: Object to form.

16 A. I can't tell that from what I'm
17 looking at.

18 Q. Okay.

19 A. Can you -- all right.

20 Q. Sure. It does show that a number of
21 children assigned "unknown" at birth, had
22 their death certificates be issued with a
23 different sex designation.

24 Is that right?

25 A. It does show that; yes.

1 Q. Okay. All right. I'm going to
2 try -- try to share again, and hopefully, it
3 works.

4 A. Okay.

5 Q. Let me know if the right table is
6 showing.

7 A. It is.

8 Q. Okay. I'm going to zoom in.

9 MR. PAGAN: Matt, I'm going to
10 use a name. Obviously, we will agree
11 that that's confidential and should be
12 redacted.

13 MR. JONES: Yes. Okay.
14 Agreed.

15 BY MR. PAGAN:

16 Q. Mr. Bishop, I'm going to refer you
17 to the row for a [Redacted name]. Can you see
18 where my cursor is at?

19 A. I can.

20 Q. Okay. Going to the notes for that
21 entry -- and I understand that it is hard to
22 read, but it states:

23 "This record was corrected by
24 affidavit to change the child's sex to 'male,'
25 but not changed on the statistical file."

1 Did I read that correctly?

2 A. You did.

3 Q. Okay. What is the statistical file?

4 A. The statistical file is a file that
5 the Tennessee Department of Health --
6 specifically, the Department of Vital Records
7 and Statistics -- provides to NAPHSIS on all
8 vital events that happened in the state for a
9 given year.

10 Q. Great. And just so that we can
11 leave the shared screen, the fifth row from
12 the bottom is an entry for another individual,
13 and it also states:

14 "This record was corrected by
15 affidavit to change the child's sex as 'male,'
16 but not changed on the statistical file."

17 Is that right?

18 A. Can you go back and explain which
19 record you're talking about? Fifth from the
20 bottom?

21 Q. Fifth from the bottom.

22 A. I believe that says "female."

23 Q. Okay. But would you agree that the
24 record -- that the note says that the record
25 was corrected by affidavit, and that it was

1 not changed on the statistical file?

2 A. No. I can't agree to that, because
3 that's not what it says.

4 Q. Sure. Can you read to me what it
5 says?

6 A. It says:
7 "Sex on the birth record appears to
8 have been corrected to 'female.'"

9 Q. Sorry. That's seventh from the
10 bottom. So two further down. The fifth row
11 from the bottom.

12 A. Are you counting the "records
13 sealed" line?

14 Q. I'm counting the two blank lines
15 below that.

16 A. Oh, okay. Hang on.

17 Q. If you look at the shared screen, I
18 have my cursor over it.

19 A. Yes, I got it now. It says,
20 "'Male,' but not changed on the statistical
21 file." Correct.

22 Q. Thank you. And just to -- going
23 down that row, on the column for "Birth Year,"
24 it appears this individual was born in 1984.
25 Is that correct?

1 A. I'm going to reference the name. Is
2 it [Redacted name]?

3 Q. It is [Redacted name].

4 A. Yes; 1984.

5 Q. Great.

6 MR. JONES: Just for the court
7 reporter, those names need to be redacted
8 as well.

9 MR. PAGAN: Agreed. Thank you.

10 BY MR. PAGAN:

11 Q. And a couple -- four columns down,
12 it is the DCN. Do you see that?

13 A. I do.

14 Q. What is the "DCN?"

15 A. That's called the "Document Control
16 Number."

17 Q. Okay. And it has, "Death: Sex,
18 male." Is that right?

19 A. For 2005-001924, correct.

20 Q. And the DCN number that you just
21 read, that is the record number for the death
22 certificate.

23 A. That is correct.

24 Q. Is that right?

25 A. That is correct.

1 Q. So, this individual died in 2005.

2 Is that correct?

3 A. That is correct.

4 Q. Okay. Thank you. I'm just going to
5 stop sharing now.

6 A. Okay.

7 Q. On your declaration, you state that
8 the Tennessee Vital Statistics Birth Data
9 Element Layout contains over 416 data
10 elements. Is that right?

11 A. That's correct.

12 Q. Is the Tennessee Vital Statistics
13 Birth Data Element Layout the same as the
14 statistical file?

15 A. I couldn't answer that.

16 Q. And, just to go back to the two
17 records that we were discussing, when a birth
18 certificate is issued to either of those two
19 individuals, it would say that their sex is
20 "male."

21 Is that correct?

22 A. I could not answer that.

23 Q. If you recall, the note stated:

24 "This record was corrected by
25 affidavit to change the child's sex to

1 'male.'"

2 A. Then yes.

3 Q. Okay. But their statistical file
4 would still indicate their sex as "unknown."
5 Is that correct?

6 A. That is correct. If the file was
7 already closed.

8 Q. Okay. Thank you. So, based on what
9 you just testified about the file being
10 already closed, when does that happen?
11 When -- let me rephrase.

12 When is the statistical file
13 closed?

14 A. Let me see if I can recall. So,
15 we'll say for 2019, which was last year, that
16 file normally closes approximately around May
17 of the next year.

18 Q. Okay.

19 A. So, right about now, the mortality
20 file would be closing.

21 Q. And when the Office of Vital Records
22 provides -- let me go back, sorry.

23 Does the Office of Vital
24 Records provide data for research purposes?

25 A. Yes.

1 Q. When it provides that data, do they
2 use the statistical file?

3 A. Yes.

4 Q. Is a person's birth certificate able
5 to be changed without changing the statistical
6 file?

7 A. If the file's already closed, yes.

8 Q. Great. Thank you. All right.

9 MR. PAGAN: We've been going
10 for a little over an hour and 15.

11 Mr. Bishop, do you need a break, or --

12 THE WITNESS: I'm fine, if you
13 guys are.

14 MR. PAGAN: Okay.

15 Matt, if it's okay, I would like to
16 take a five-minute break.

17 MR. JONES: That's no problem.

18 MR. PAGAN: Okay. Thank you.

19 MR. JONES: Okay.

20 (Short break.)

21 BY MR. PAGAN:

22 Q. Mr. Bishop, if I could direct your
23 attention to what's been premarked as
24 Exhibit 7?

25 (Exhibit 7 marked for identification)

1 A. Okay.

2 Q. Thank you. Have you ever seen this
3 document before?

4 A. I have.

5 MR. JONES: And, just before we
6 get into it, again, for the court
7 reporter's record, this is a confidential
8 record. More so than the other ones.

9 BY MR. PAGAN:

10 Q. What is it?

11 A. It's a sealed birth certificate.

12 Q. Okay. It lists the sex of the child
13 as "Undetermined." Is that correct?

14 A. That is correct.

15 Q. Okay. And there's a certification
16 on both pages signed by you. Is that correct?

17 A. That is correct.

18 Q. Okay. If we can turn to the second
19 page, please?

20 A. Okay.

21 Q. There is an explanatory note below
22 the certification. Is that right?

23 A. I believe so. It's a little hard to
24 read.

25 Q. Yes. It states:

1 "Because Children and Family
2 Services has provided info on item number
3 nine, that this child has been determined to
4 be a male, and the Court decreed the child
5 a -- unreadable word -- named as that of the
6 father, PMT has decided we should put 'male'
7 as sex on new certificate, without requesting
8 medical records."

9 Did I read that correctly?

10 A. As far as I can determine, yes.

11 Q. Okay. It appears that the sex
12 designation on the person's birth
13 certificate -- birth certificate may be
14 changed without requiring medical records.

15 Is that right?

16 MR. JONES: Object to form.

17 A. I'm sorry, Omar. I'm still looking.
18 Can you give me a second? This was filed '82.
19 Yeah. I can't speak to that.

20 Q. Okay.

21 A. Very hard to see.

22 Q. All right. Generally speaking, can
23 the sex designation on a person's birth
24 certificate may be changed without requiring
25 medical records?

1 MR. JONES: Object to form.

2 A. I'm sorry, man. I'm trying to
3 figure out what item nine is from the note.

4 Q. Sure. We're not talking about the
5 note now. This is just --

6 A. Okay.

7 Q. -- a broader question.

8 A. Okay. Can you read -- repeat,
9 please.

10 Q. Sure. Can the sex designation on a
11 person's birth certificate be changed without
12 requiring medical records?

13 MR. JONES: Object to form.

14 A. That, I don't know.

15 Q. Okay. On the certification on each
16 of these pages, signed by you, it states, in
17 part, that the birth certificate was, "sealed
18 in accordance with Tennessee Code Annotated
19 68-3-313(3)."

20 Is that right?

21 A. That's what it reads; yes.

22 Q. So, it is possible for a birth
23 certificate to be amended, and to maintain a
24 copy of the original birth certificate under
25 seal. Is that correct?

1 MR. JONES: Object to form.

2 A. Can you repeat that?

3 Q. Sure. Can a birth certificate be
4 amended, and the Office of Vital Records
5 maintain a copy of the original birth
6 certificate under seal?

7 MR. JONES: Object to form.

8 A. I'm sorry, Omar. I'm having a hard
9 time understanding that question.

10 Q. Sure.

11 A. It's almost three parts. I'm sorry.

12 Q. Let's go part by part.

13 A. Okay.

14 Q. According to the statute referenced,
15 it has to deal with adoptions. Is that
16 correct?

17 A. No. I think that has to do with
18 sealed records.

19 Q. Okay. When a child is adopted, will
20 a new birth certificate be issued with the
21 adoptive parents' names on the birth
22 certificate?

23 A. Yes.

24 Q. Will the original birth certificate
25 be then kept under seal by the Office of Vital

1 Records?

2 A. Yes.

3 Q. Okay. So, is it possible for a
4 birth certificate to be amended and an
5 original -- and the original copy to be kept
6 under seal?

7 A. There are records that have been
8 amended that have been put under seal.
9 Correct.

10 Q. Okay. Thank you. Is it fair to say
11 that when a birth certificate is amended, the
12 data elements in the original birth
13 certificate may not necessarily be lost?

14 MR. JONES: Object to form.

15 A. I cannot speak to that.

16 Q. All right. Turning to Exhibit 8?
17 (Exhibit 8 marked for identification)

18 A. Okay.

19 Q. Have you ever seen this document
20 before?

21 A. I've seen the form, but not
22 specifically this document, I don't think.

23 Q. It is a birth certificate. Correct?

24 MR. JONES: Just for the court
25 reporter's sake, this is another

1 confidential Exhibit.

2 MR. PAGAN: Thank you, Matt.

3 BY MR. PAGAN:

4 Q. Mr. Bishop, it is another birth
5 certificate. Correct?

6 A. That's correct.

7 Q. And it lists the sex of the child as
8 "Unknown". Is that correct?

9 A. It does.

10 Q. Okay. Turning to the second page of
11 the exhibit, there appears to be an electronic
12 note for this birth certificate. Is that
13 right?

14 A. It does.

15 Q. And is this the type of notes that
16 appear in your computer system?

17 A. What year was this? 2004? It
18 would -- it would look like it would appear in
19 a previous version. Correct.

20 Q. Okay. And your current computer
21 system would show similar notes. Is that
22 correct?

23 A. That is correct.

24 Q. Okay. The note in this -- sorry.

25 The note for this birth

1 certificate reads, in part, that, "the child
2 was born with both sex organs."

3 Is that correct?

4 A. That's what it reads.

5 Q. For a child born with both sex
6 organs, is it your opinion that the child
7 cannot identify as male or female?

8 MR. JONES: Object to form.

9 A. I don't have an opinion on that.

10 Q. Thank you. When a person is born
11 with both sex organs and dies, can their death
12 certificate designate their sex as "male" or
13 "female?"

14 MR. JONES: Object to form.

15 A. Yes.

16 Q. Can a person whose birth certificate
17 originally designated their sex as "unknown,"
18 later amend their birth certificate to list
19 their sex as "male" or "female?"

20 MR. JONES: Object to form.

21 A. When you say -- let me clarify.
22 When you say "person," you mean the person
23 whose name shows as the child on the birth
24 certificate?

25 Q. Correct.

1 A. Can you repeat that one more time?

2 Q. Can a person whose name is listed on
3 a birth certificate, and their sex is
4 designated as "unknown at birth," later amend
5 their birth certificate to reflect their sex
6 as "male" or "female?"

7 MR. JONES: Object to form.

8 A. I cannot answer that definitely.

9 Q. Is it possible?

10 A. I can't answer that definitely.

11 Q. Okay. Earlier, we reviewed a
12 memorandum from 2019 that contained two
13 tables. Do you recall that?

14 A. You're talking about the statistical
15 file? Or the statistical document --

16 Q. Yes.

17 A. -- on children born between -- I
18 think it was to 2018.

19 Q. Correct.

20 A. Yes.

21 Q. Okay. We discussed at least two
22 instances in which the birth record was
23 corrected by affidavit to change the child's
24 sex from "unknown" to "male."

25 Do you recall that?

1 A. Yes.

2 Q. So, is it possible for a person to
3 correct their sex from "unknown," to "male" or
4 "female?"

5 MR. JONES: Object to form.

6 A. I can't speak definitely to that.
7 I'm not sure who wrote that affidavit.

8 Q. Can a person born with ambiguous
9 genitalia, and designated as "unknown" on
10 their birth certificate, be able to update the
11 "sex" designation on their birth certificate
12 based on their chromosomal makeup?

13 MR. JONES: Object to form.

14 A. I can't answer that.

15 Q. Can a person born with ambiguous
16 genitalia, and designated as "unknown" on
17 their birth certificate, be able to update the
18 "sex" designation on their birth certificate,
19 based on their hormonal makeup?

20 MR. JONES: Object to form.

21 A. I can't answer that.

22 Q. Okay. All right. All right; going
23 back to what's been marked as Exhibit 2. This
24 is "Defendants' Expert Disclosure." Please
25 let me know when you have it in front of you.

1 A. Okay.

2 Q. Okay. On page four, paragraph (1),
3 that pertains to your expected testimony as
4 per the disclosures. Is that correct?

5 A. That's correct.

6 Q. It states:

7 "The Tennessee Department of
8 Health routinely cooperates with federal
9 adjudicating agencies such as the Department
10 of State, the Social Security Administration,
11 the Armed Services and other state agencies."

12 Did I read that correctly?

13 A. Yes.

14 Q. Is the cooperation to which that
15 paragraph refers to, for purposes of identity
16 verification?

17 A. I cannot speak for the other
18 agencies.

19 Q. Okay. Do you know what the other --
20 for what purposes would the Office of Vital
21 Records share a person's birth record with
22 other governmental agencies?

23 MR. JONES: Object to form.

24 A. We don't necessarily share the
25 actual birth certificate. I'll just use the

1 Armed Forces as an example.

2 We do a verification that the person
3 was born here in Tennessee before an enlistee
4 joins the armed services.

5 Q. Okay. For purposes of the next few
6 questions, when I refer to a "transgender
7 person," I am referring to someone whose
8 gender identity is different from the sex they
9 were recorded as at birth.

10 Is that understood?

11 A. It is.

12 Q. Okay. Are you aware that
13 transgender people are able to correct the sex
14 designation on their social security records
15 to match their gender identity?

16 MR. JONES: Object to form.

17 A. I am not.

18 Q. Are you aware whether -- sorry.
19 Scratch that.

20 Are you aware that the
21 plaintiffs in this case have corrected their
22 social security records to reflect their
23 female gender identity?

24 A. I am not.

25 Q. Are you aware that transgender

1 people are able to correct the sex designation
2 on their U.S. passport to match their gender
3 identity?

4 MR. JONES: Object to form.

5 A. I am not.

6 Q. Are you aware that some of the
7 plaintiffs in this case have corrected their
8 U.S. passports to reflect their female gender
9 identity?

10 A. I am not.

11 Q. Are you aware that transgender
12 people are able to correct the sex designation
13 on their Tennessee-issued driver's licenses to
14 match their gender identity?

15 MR. JONES: Object to form.

16 A. I am not.

17 Q. Are you aware that some of the
18 plaintiffs in this case have corrected their
19 Tennessee-issued driver's licenses to reflect
20 their female identity -- gender identity?

21 A. I'm not.

22 Q. Would you agree that the -- that
23 Tennessee does not permit a transgender person
24 to update the designation for their sex --
25 scratch that.

1 Would you agree that Tennessee
2 does not permit a transgender person to update
3 the designation for the sex they were deemed
4 at birth, to the sex designation consistent
5 with their gender identity?

6 MR. JONES: Object to form.

7 A. Omar, I'd have to have you repeat
8 that again, please?

9 Q. Sure. Keeping in mind the
10 definition of a "transgender person" that we
11 agreed to earlier?

12 A. Okay.

13 Q. That being someone whose gender
14 identity is different from the sex they were
15 designated at birth.

16 Would you agree that Tennessee
17 does not permit a transgender person to update
18 the sex designation of the sex they were
19 recorded at birth, to the sex designation
20 consistent with their gender identity?

21 MR. JONES: Object to form.

22 A. I don't necessarily agree. I will
23 say we follow the Tennessee statute when it --
24 when it comes to that.

25 Q. When can a person change the "sex"

1 designation on their birth certificate?

2 MR. JONES: Object to form.

3 A. Without having the TCA in front of
4 me, I cannot speak directly to that.

5 Q. If a person's genitalia -- okay.

6 If a person was recorded as
7 "male" at birth, based on their genitalia,
8 would that person be able to later correct the
9 "sex" designation on their birth certificate
10 because it does not match their identity?

11 MR. JONES: Object to form.

12 A. I cannot speak to that.

13 Q. You oversee the operations of the
14 Office of Vital Records. Right?

15 A. That's correct.

16 Q. If a person who was designated
17 "male" at birth, but identifies as female,
18 were to come to the Office of Vital Records to
19 request that their birth certificate be
20 corrected to reflect their female gender
21 identity, would they be able to do that?

22 MR. JONES: Object to form.

23 A. Per the statute, no.

24 Q. And to which statute do you refer?

25 A. Sixty-eight.

1 Q. Okay. If you go to Exhibit 1, the
2 amended complaint? And you go to page 15;
3 paragraph 70?

4 (Exhibit 1 marked for identification)

5 A. Okay.

6 Q. When you referred to the statute,
7 you answered "68." Do you refer to Tennessee
8 Code Annotated, Section 68-3-203(d)?

9 A. No. Based on your question, that
10 has to do with sex change surgery. And you
11 were asking a question about gender.

12 Q. Okay. All right. We'll come back
13 to this.

14 Would you agree that in order
15 to maintain and promote nationwide uniformity
16 in the system of vital records, the forms of
17 certificates and reports of the Tennessee
18 Office of Vital Records must look to the
19 federal agency responsible for national vital
20 statistics?

21 MR. JONES: Object to form.

22 A. Omar, can you repeat that? It's
23 pretty long.

24 Q. Sure. Let me just -- does the
25 Tennessee Office of Vital Records look to the

1 federal agency responsible for national vital
2 statistics for guidance?

3 A. Yes.

4 Q. Okay. And if you can go to
5 Exhibit 9?

6 (Exhibit 9 marked for identification)

7 Q. Do you have it?

8 A. I do.

9 Q. Okay. Do you recognize this
10 document?

11 A. I do not.

12 Q. Okay. It's a printout of the
13 Tennessee Code Annotated, Section 68-3-202.
14 Is that correct?

15 A. That's what it looks like; yes.

16 Q. And this provision is one of the
17 provisions that, as State Registrar, you
18 enforce and administer?

19 A. Correct.

20 Q. Okay. In paragraph -- is the reason
21 that the Office of Vital Records looks to
22 guidance from the federal agency responsible
23 for national vital statistics, the desire to
24 promote and maintain nationwide uniformity in
25 the system of vital records?

1 MR. JONES: Object to form.

2 A. Can you repeat?

3 Q. Sure. Would you agree that it is
4 important to promote and maintain nationwide
5 uniformity in the system of vital records?

6 MR. JONES: Object to form.

7 A. I cannot speak to that.

8 Q. Okay. Paragraph (a) of Exhibit 9
9 states:

10 "In order to promote and
11 maintain nationwide uniformity in the system
12 of vital records, the forms of certificates,
13 reports and other returns required by this
14 chapter, or by regulations adopted under this
15 chapter, shall include, as a minimum, the
16 items recommended by the federal agency
17 responsible for national vital statistics."

18 Did I read that correctly?

19 A. You did.

20 Q. Okay. Would you agree that the
21 Tennessee legislature considers as important,
22 "to promote and maintain nationwide uniformity
23 in the system of vital records?"

24 MR. JONES: Object to form.

25 A. I cannot speak for the legislature.

1 Q. Okay. Would you agree that per the
2 statute that you enforce, it is important to
3 promote and maintain nationwide uniformity in
4 the system of vital records?

5 MR. JONES: Object to form.

6 A. I cannot speak to that.

7 Q. Okay. What is the National Center
8 for Health Statistics?

9 A. NAPHSIS?

10 Q. No. I'm asking about the National
11 Center for Health Statistics.

12 A. Can you clarify what you're asking
13 me?

14 Q. Sure. What is the federal agency
15 responsible for national vital statistics?

16 A. CDC.

17 Q. Okay. Are you aware that the CDC
18 publishes a Model State Vital Statistics Act
19 and Regulations?

20 A. Yes.

21 Q. Okay. If we can go to Exhibit 10?
22 Let me know when you have it open.

23 (Exhibit 10 marked for identification)

24 Q. Okay. Do you recognize this
25 document?

1 A. I have seen it.

2 Q. What is it?

3 A. The Model State Vital Statistics Act
4 and Regulations.

5 Q. And this was published by the CDC?

6 A. Correct.

7 Q. Is that right?

8 A. It's shown, yes.

9 Q. If you turn to page 10 of the Model
10 Act?

11 A. Okay.

12 Q. Do you see the heading, "Section 21.
13 Amendment of Vital Records?"

14 A. Okay.

15 Q. Okay. Paragraph (d) of Section 21
16 states:

17 "Upon receipt of a certified
18 copy of an order of (a court of competent
19 jurisdiction) indicating the sex of an
20 individual born in this State has been changed
21 by surgical procedure and whether such
22 individual's name has been changed, the
23 certificate of birth of such individual shall
24 be amended as prescribed by regulation."

25 Did I read that correctly?

1 A. You did.

2 Q. Would you agree that Tennessee's
3 laws and regulations are inconsistent with the
4 guidance of the CDC?

5 MR. JONES: Object to form.

6 A. I am not.

7 Q. Sorry. There was some overlap. I'm
8 just going to restate.

9 Would you agree that
10 Tennessee's laws and regulations are
11 inconsistent with the guidance of the CDC,
12 with regards to whether a "sex" designation
13 can be amended based on the obtaining of sex
14 change surgery?

15 MR. JONES: Object to form.

16 A. I am not.

17 Q. Sorry. Do you agree or disagree, is
18 the question.

19 A. I'm sorry. I lost my page. Let me
20 get it again. You asked me if this guidance
21 is inconsistent with Tennessee state law?

22 Q. Correct.

23 A. They do not match. Correct.

24 Q. Thank you. Are you aware that 48
25 states permit a transgender person to update

1 the designation for the sex they were deemed
2 at birth to the "sex" designation consistent
3 with their gender identity?

4 MR. JONES: Object to form.

5 A. I am not.

6 Q. Would you agree that Tennessee's
7 policy with regards to sex -- scratch that.

8 Would you agree that
9 Tennessee's policies with regards to the
10 ability of transgender people to update the
11 "sex" designation on their birth certificates
12 is an outlier in the nation's system of vital
13 statistics?

14 MR. JONES: Object to form.

15 A. I have no opinion on that.

16 Q. What is "NAPHSIS?"

17 A. They are a subset for the CDC. I'm
18 not quite sure what the acronym stands for.

19 Q. Does it stand for the "National
20 Association for Public Health Statistics and
21 Information Systems?"

22 A. It does. Thank you.

23 Q. Do you consider NAPHSIS to be a
24 reputable source when it comes to maintenance
25 and recording of vital records?

1 MR. JONES: Object to form.

2 A. I cannot speak to that.

3 Q. As a State Registrar and office --
4 and Director of Office of Vital Records, do
5 you look to guidance provided by NAPHSIS?

6 A. I have.

7 Q. If you can open what is Exhibit 11,
8 please?

9 (Exhibit 11 marked for identification)

10 A. Okay.

11 Q. I'm showing you a printout from the
12 website of NAPHSIS. Under "Jurisdictions," it
13 states:

14 "Our members are comprised of
15 employees of the 57 state and territorial
16 vital record offices throughout the
17 United States, commonly referred to as
18 jurisdictions. A jurisdiction is tasked with
19 recording all vital events that occur within
20 their jurisdiction."

21 Did I read that correctly?

22 A. You did.

23 Q. Are you a member of NAPHSIS?

24 A. I am.

25 Q. Okay. Are other employees within

1 your office members of NAPHSIS?

2 A. We are all members; yes.

3 Q. Thank you. If you can open what's
4 been marked as Exhibit 12?

5 (Exhibit 12 marked for identification)

6 A. Okay.

7 Q. Have you ever seen this document
8 before?

9 A. I have not.

10 Q. What is it?

11 A. The title says, "A Report of the
12 NAPHSIS Registration Committee."

13 Q. And it was published in
14 January 2018. Is that right?

15 A. That's what it shows; yes.

16 Q. Okay. In this report, the NAPHSIS
17 Registration Committee appears to make
18 recommendations. If you go to page six of
19 seven of the report, please?

20 A. Okay.

21 Q. For paragraph 8(b) states:

22 "Recommend documenting gender
23 identity or sex on the legal portion of the
24 birth record using the following standard
25 gender identity/sex labels.

1 i. Female.

2 ii. Male.

3 iii. X."

4 Did I read that correctly?

5 A. You did.

6 Q. Do you agree that the Registration
7 Committee of NAPHSIS recommends that a
8 person's birth certificate used for
9 identification reflect a person's gender
10 identity?

11 MR. JONES: Object to form.

12 A. I can't speak for that.

13 Q. Okay. If we can go to Exhibit 3. --
14 your declaration -- please?

15 A. Okay.

16 Q. In paragraph (e), you state:

17 "Creating additional ways in
18 which Tennessee's birth records can be
19 modified, particularly without a statutory
20 scheme in place to regulate and track such
21 modifications, heightens the potential for
22 fraud and illegality."

23 Did I read that correctly?

24 A. You did.

25 Q. Can you cite to a study to back up

1 the statement you make in paragraph (e) of
2 your declaration?

3 A. I cannot.

4 Q. Can you cite to a report to back up
5 the statement you make in paragraph (e) of
6 your declaration?

7 A. I cannot.

8 Q. Would you agree that your statement
9 is based on speculation of what might happen?

10 MR. JONES: Object to form.

11 A. That's incorrect.

12 Q. What is the basis for your statement
13 in paragraph (e)?

14 A. The basis is, without statutory
15 regulations being in place, modifications
16 would heighten the potential for fraud and
17 illegality.

18 Q. Okay. As Director of the Office of
19 Vital Records, you have the power to
20 promulgate regulations, do you not?

21 A. Can you repeat that?

22 Q. As the State Registrar and Director
23 of the Office of Vital Records, you have the
24 power to promulgate regulations with regards
25 to the completion and maintenance of vital

1 records.

2 Is that right?

3 A. Can you clarify that, please?

4 Q. Sure. As Director of the Office of
5 Vital Records, do you have the power to
6 promulgate regulations with regards to the
7 maintenance of vital records?

8 A. When you say "promulgate," what do
9 you mean by that?

10 Q. Does your office issue regulations
11 with regards to the completion and maintenance
12 of vital records?

13 A. No. We follow the statute and the
14 rules.

15 Q. Does your office promulgate rules
16 with regards to the completion and maintenance
17 of vital records?

18 A. We have not, since I've been here.

19 Q. All right. As part of your power
20 and duties, do you have the ability to
21 promulgate rules with regards to the
22 completion and maintenance of vital records?

23 A. Not without approval.

24 Q. Whose approval do you need?

25 A. Commissioner's.

1 Q. By "commissioner," do you mean the
2 Commissioner for the Department of Health for
3 the state of Tennessee?

4 A. Correct. I fall underneath her
5 jurisdiction.

6 Q. As Director of the Office of Vital
7 Records, and with the approval of the
8 Commissioner for the Department of Health for
9 the state of Tennessee, can you promulgate
10 rules with regards to the completion and
11 maintenance of vital records?

12 MR. JONES: Object to form?

13 A. Omar, you'll have to clarify the
14 word, "promulgate" for me. I'm sorry.

15 Q. Sure. Can the Department of Health
16 issue rules with regards to the completion and
17 maintenance of vital records?

18 MR. JONES: Object to form.

19 A. Are you asking me if we could add or
20 change rules?

21 Q. Yes.

22 A. We do have that authority.

23 Q. Thank you. Earlier, I asked you for
24 a basis for your statement of paragraph (e) in
25 your declaration. Do you recall that?

1 A. I do.

2 Q. Okay. And, my apologies. What is
3 the basis for your opinion?

4 A. My basis is we need some kind of
5 guidelines and regulations to follow.

6 Q. Okay. Tennessee already permits
7 persons to update or correct the "sex"
8 designation on their birth certificates. Is
9 that right?

10 MR. JONES: Object to form.

11 A. I believe, based on the TCA, within
12 the first year, if it's a minor error.

13 Q. If you can go to what's been marked
14 Exhibit 13.

15 A. Thirteen?

16 Q. Yes.

17 A. Okay.

18 (Exhibit 13 marked for identification)

19 A. Okay.

20 Q. Do you recognize this document?

21 A. I do.

22 Q. What is it?

23 A. That is a page from my website.

24 Q. By "your website," do you mean the
25 website for the Tennessee Office of Vital

1 **Records?**

2 **A. Correct.**

3 **Q. Okay. If we go to page four?**

4 **A. Okay.**

5 **Q. There's a heading that says:**

6 **"How do I correct the sex on my**
7 **birth certificate?"**

8 **Do you see that?**

9 **A. I do.**

10 **Q. And the second sentence says:**

11 **"If a mistake was made on the**
12 **certificate when recording the sex of the**
13 **child, the following should be submitted to**
14 **this office:**

15 1. **A signed and notarized**
16 **affidavit showing the full name, date of**
17 **birth, the sex as it is shown on the**
18 **certificate and the sex as it should be**
19 **corrected listed.**

20 2. **Documentary evidence**
21 **showing the correct sex of the individual (see**
22 **examples of acceptable documentary evidence).**

23 3. **A check or money order for**
24 **the required amendment fee, and an additional**
25 **fee for a copy of the corrected certificate."**

1 Did I read that correctly?

2 A. You did.

3 Q. So it is possible for a person to
4 correct the sex on their birth certificate,
5 even after their first year of birth?

6 A. If a mistake was made.

7 Q. Let me just restate that.

8 Is it possible for a person to
9 correct the "sex" designation on their birth
10 certificate after the first year of their
11 life?

12 A. I cannot speak to that without the
13 TCA in front of me. But it looks like if a
14 mistake was made.

15 Q. Okay. Would you agree that
16 permitting plaintiffs to update the "sex"
17 designation on their birth certificate would
18 not necessarily entail creating an additional
19 way to modify birth certificates?

20 MR. JONES: Object to form.

21 A. I can't answer that.

22 Q. Why not?

23 A. Repeat the question. Because I
24 didn't really understand it. You're --

25 Q. Sure. Would you agree that

1 permitting plaintiffs to update the "sex"
2 designation on their birth certificate would
3 not necessarily entail creating an additional
4 way to modify birth certificates?

5 MR. JONES: Object to form.

6 A. Yeah, I -- once again, I can't
7 answer that, because I don't understand your
8 question.

9 Q. Sure. Could -- could the plaintiffs
10 submit an affidavit, that's notarized and
11 signed, along with documentary evidence, and a
12 check or money order, in order for them to
13 correct the "sex" designation on their birth
14 certificate?

15 MR. JONES: Object to form.

16 A. I can't answer that. Because it
17 doesn't say "the person." It says, "sex of
18 the child."

19 Q. What do you mean by "illegality" in
20 paragraph (e) of your declaration?

21 A. What do I mean by that?

22 Q. Yes.

23 A. Doing something that's not legal.

24 Q. Such as?

25 A. Such as representing yourself as

1 somebody else.

2 Q. So, would you agree that that's a
3 form of fraud?

4 A. It is.

5 Q. Okay. Is there anything else that
6 you mean by "illegality," besides "fraud?"

7 A. If you mean "fraud" as in
8 "stealing" -- obtaining stuff that's not
9 yours -- then, yes.

10 Q. Okay. For purposes of the -- let me
11 just clarify.

12 For purposes of the use of the
13 word "illegality" in your declaration, is
14 there anything you mean by "illegality"
15 besides "fraud?"

16 A. Theft.

17 Q. Okay. The Office of Vital Records
18 has means and processes for detecting fraud.
19 Correct?

20 A. I'm sorry, Omar. Can you repeat
21 that?

22 Q. Sure. The Office of Vital Records
23 has means and processes for detecting fraud.
24 Is that right?

25 A. Not necessarily. No.

1 Q. Do you not have ways to investigate
2 fraud?

3 A. If it's brought to our attention, we
4 do.

5 Q. Okay. Would the situation in which
6 a person can have incongruent "sex"
7 designations in some identity documents than
8 their birth certificate, actually heighten the
9 potential for fraud?

10 MR. JONES: Object to form.

11 A. I can't speak to that.

12 Q. Okay. You speak about the
13 possibility of fraud and illegality as a
14 concern in your declaration. I'm just
15 wondering if having to two incongruent
16 identity documents heightens the potential for
17 fraud?

18 MR. JONES: Object to form.

19 A. I can't speak to that.

20 Q. Okay.

21 MR. PAGAN: Okay. If we can
22 take a break? Five minutes, please?

23 MR. JONES: Sure. That's no
24 problem.

25 (Short break.)

1 MR. PAGAN: So, back on the
2 record. That's it for us, Matt. I don't
3 know if you want to ask any questions.

4 MR. JONES: I have no
5 follow-up.

6 MR. PAGAN: Okay.

7 MR. JONES: So, for the court
8 reporter, I believe we needed transcripts
9 by the 29th, at the latest. I don't
10 know if that's expedited or not. And our
11 witnesses will be reading and signing.

12 MR. PAGAN: Okay. Matt, just
13 to clarify on that, we're filing on the
14 29th.

15 MR. JONES: Okay.

16 MR. PAGAN: So --

17 MR. JONES: If we need it
18 faster than that, that's --

19 MR. PAGAN: I don't want to
20 tell you when to get the transcript, but
21 --

22 MR. JONES: Sure.

23 MR. PAGAN: -- obviously,
24 knowing that the errata wouldn't have
25 come in before.

1 MR. JONES: Absolutely. So
2 then, we can expedite however we need to.

3 MR. MONTGOMERY: Did anyone
4 else want to give the court reporter
5 their transcript orders?

6 MR. PAGAN: I think we've
7 already ordered ours, and they are
8 expedited.

9 MR. MONTGOMERY: All right,
10 then. Thank you everyone.

11 MR. PAGAN: Thank you,
12 Mr. Bishop.

13 MR. JONES: Thank you, all.

14 MR. PAGAN: Thank you,
15 everyone.

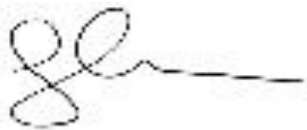
16 (Whereupon, the deposition adjourned
17 at 4:32 p.m.)
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C E R T I F I C A T E

I, Giselle Mitchell-Margerum, RPR, CRI, CCR, Licensed Court Reporter, Tennessee, do hereby certify that the witness was first duly sworn by me and that I was authorized to and did report said proceedings.

I further certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; that reading and signing was requested; and that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken; and that I have no interest, financial or otherwise, in this case.

IN WITNESS WHEREOF, I have hereunto set my hand
this 20th day of May 2020.



GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR

CERTIFICATE OF DEPONENT

I, EDWARD GRAY BISHOP, hereby certify that I have read the foregoing pages, numbered 1 through 88, of my deposition of testimony taken in these proceedings on Wednesday, May 20, 2020 and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed:

Name: EDWARD GRAY BISHOP

Date:

1	ERRATA SHEET	
2	Case Name:	Kayla Gore, et al. v. William Byron
3	Witness Name:	EDWARD GRAY BISHOP
4	Date:	
5	Page/Line	FromTo
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20	____/____	_____
21	Subscribed and sworn to before	
22	me this date day of month , 2020.	
23	_____	
24	EDWARD GRAY BISHOP	
25		

/	10:5,8;21:25 accurately (3) 32:21;35:19,23	39:4;83:5,10 again (8) 27:15;40:9;45:20;47:2; 54:6;66:8;73:20;84:6	7:8,15;8:24;9:21;16:8; 18:22;21:6;25:18,21;26:2,6, 10;48:13
/_ (16) 91:5,6,7,8,9,10,11,12,13, 14,15,16,17,18,19,20	acronym (1) 74:18 Act (3) 71:18;72:3,10	age (1) 29:18 agencies (4) 63:9,11,18,22	ambiguous (2) 62:8,15 amend (2) 60:18;61:4
[acting (1) 11:25 actual (1) 63:25 actually (1) 86:8	agency (5) 68:19;69:1,22;70:16; 71:14 ago (1) 15:8 agree (25) 30:2;32:8,16,20;47:10; 48:23;49:2;65:22;66:1,16, 22;68:14;70:3,20;71:1; 73:2,9,17;74:6,8;77:6;78:8; 83:15,25;85:2	amended (9) 15:10;56:23;57:4;58:4,8, 11;68:2;72:24;73:13 Amendment (2) 72:13;82:24 Annotated (3) 56:18;68:8;69:13
A	add (2) 22:21;80:19 additional (5) 23:8;77:17;82:24;83:18; 84:3 adjourned (1) 88:16 adjudicating (1) 63:9 administer (1) 69:18 Administration (3) 18:23;30:13;63:10 adopted (2) 57:19;70:14 adoptions (1) 57:15 adoptive (1) 57:21 Affairs (1) 30:12 affidavit (8) 47:24;48:15,25;51:25; 61:23;62:7;82:16;84:10 affixed (1) 42:11 after (3)	agreed (5) 9:10,11;47:14;50:9;66:11 agreement (1) 7:20 aids (1) 35:9 Air (2) 18:12,20 al (1) 91:2 Alabama (1) 18:20 allow (1) 42:21 almost (1) 57:11 along (1) 84:11 already (5) 52:7,10;53:7;81:6;88:7 Also (13)	another (5) 43:6,6;48:12;58:25;59:4 answer (42) 8:23,25;9:8,15,24;14:19; 18:2;22:5,10;23:5,10,16,22; 24:9,25;25:6;30:4;31:16; 32:13;33:15,21;34:7,13,14; 35:15;36:1,7,8,12;37:11,17; 39:16,19;51:15,22;61:8,10; 62:14,21;83:21;84:7,16 answered (1) 68:7 anyone (1) 88:3 anything (7) 12:25;22:18,21,24;23:2; 85:5,14 apologies (1) 81:2 appear (3) 18:22;59:16,18 appearances (1) 7:6 appears (8) 32:9;45:5;46:8;49:7,24; 55:11;59:11;76:17

appointed (2) 17:19,24	32:3	29:10	5,9,17,19;84:2,4,13;86:8
approval (3) 79:23,24;80:7	authorized (1) 32:9	being (9) 7:19,21;8:3;12:16;19:25; 42:13;52:9;66:13;78:15	Births (3) 44:20;45:2,6
approximate (2) 12:19;13:18	aware (9) 64:12,18,20,25;65:6,11, 17;71:17;73:24	believe (9) 23:24;24:4,12,20;25:2; 48:22;54:23;81:11;87:8	BISHOP (17) 7:2;8:2;10:23;14:22; 20:17;22:10;24:20;27:22; 39:17;42:9;47:16;53:11,22; 59:4;88:12;91:3,24
approximately (1) 52:16	B	belongs (1) 42:5	bit (2) 26:17;39:24
Armed (3) 63:11;64:1,4	Bachelor's (1) 18:23	below (2) 49:15;54:21	blank (1) 49:14
around (2) 12:19;52:16	back (10) 32:25;36:14;48:18;51:16; 52:22;62:23;68:12;77:25; 78:4;87:1	benefit (1) 41:20	born (11) 12:11;45:10;49:24;60:2, 5,10;61:17;62:8,15;64:3; 72:20
asked (4) 9:14,16;73:20;80:23	based (9) 46:8;52:8;62:12,19;67:7; 68:9;73:13;78:9;81:11	benefits (2) 29:23,24	both (4) 54:16;60:2,5,11
asking (5) 42:3;68:11;71:10,12; 80:19	basically (1) 12:8	Besides (8) 19:23;39:12;40:21;42:23; 43:1,9;85:6,15	bottom (6) 28:15;48:12,20,21;49:10, 11
Assessment (1) 28:17	basis (5) 78:12,14;80:24;81:3,4	between (1) 61:17	box (2) 32:2;42:21
assigned (2) 46:11,21	because (6) 49:2;55:1;67:10;83:23; 84:7,16	biology (1) 19:14	break (6) 9:22;53:11,16,20;86:22, 25
assistance (1) 29:24	becoming (1) 18:5	birth (112) 11:20;12:10;15:5;16:12, 16,22;17:3,5,11,12;26:14, 21;27:25;28:9;29:15,18,19; 31:11;32:17,21;33:7,9,17, 22,25;34:5,11,19;35:18,22; 36:4,9,23;38:9;39:14; 40:23;41:8,15;42:12;43:11; 45:12,25;46:2,11,12,21; 49:7,23;51:8,13,17;53:4; 54:11;55:12,13,23;56:11, 17,22,24;57:3,5,20,21,24; 58:4,11,12,23;59:4,12,25; 60:16,18,23;61:3,4,5,22; 62:10,11,17,18;63:21,25; 64:9;66:4,15,19;67:1,7,9, 17,19;72:23;74:2,11;76:24; 77:8,18;81:8;82:7,17;83:4,	breaks (1) 9:25
associate's (1) 18:18	been (22) 7:3;9:16;11:12;15:24; 19:16;20:12;21:11;26:25; 41:3;43:22;49:8;53:9,23; 55:3;58:7,8;62:23;72:20, 22;76:4;79:18;81:13	broader (1) 56:7	broke (1) 26:17
Association (1) 74:20	Before (22) 8:6,23;9:25;11:12,15; 18:10;19:21;20:20;21:17; 27:4;28:5;30:21,25;41:14; 44:3;54:3,5;58:20;64:3; 76:8;87:25;91:21	brought (1) 86:3	Buchert (1) 7:10
assume (1) 9:8	begins (1)	built (1) 17:17	Business (1) 18:23
attention (2) 53:23;86:3			
Attorney (3) 7:13;9:17;13:15			
attorney/client (1) 13:1			
attorneys (1) 13:15			
authority (1) 80:22			
Authorization (1)			

Byron (1) 91:2	18:8 case (27) 9:18;11:19,21;12:15,22; 13:10,16;15:10;19:17;20:3, 7,10;21:3,7;23:14,20;24:2, 7,11,15,23;25:4;45:24; 64:21;65:7,18;91:2	change (9) 22:19;47:24;48:15;51:25; 61:23;66:25;68:10;73:14; 80:20 changed (11) 46:12;47:25;48:16;49:1, 20;53:5;55:14,24;56:11; 72:20,22 changing (1) 53:5 chapter (2) 70:14,15 check (2) 82:23;84:12 child (20) 33:8,12,19;34:9;35:9; 36:3;39:5;41:16;46:1; 54:12;55:3,4;57:19;59:7; 60:1,5,6,23;82:13;84:18 children (5) 45:10;46:11,21;55:1; 61:17 child's (11) 34:18;37:8,14;40:21; 42:23;43:3,11;47:24;48:15; 51:25;61:23 chromosomal (1) 62:12 cite (2) 77:25;78:4 citizenship (1) 29:19 clarification (1) 43:8 clarify (7) 16:16;60:21;71:12;79:3; 80:13;85:11;87:13 clerk's (1) 30:11 close (1)	14:6 closed (4) 52:7,10,13;53:7 closes (1) 52:16 closing (1) 52:20 Code (3) 56:18;68:8;69:13 College (1) 18:20 column (1) 49:23 columns (1) 50:11 Combs (1) 10:13 come (3) 67:18;68:12;87:25 comes (2) 66:24;74:24 coming (1) 15:8 Commissioner (4) 17:21;80:1,2,8 Commissioner's (1) 79:25 Committee (3) 76:12,17;77:7 commonly (1) 75:17 communicated (1) 14:7 communications (1) 13:2 Community (1) 18:19 compensated (1) 19:25 competent (1)
C			
call (1) 14:13 called (1) 50:15 calls (1) 13:1 came (1) 17:24 Can (74) 12:5;14:19;17:23;20:9, 12,16,18;21:1,13;22:6,11, 16;23:17;24:3,10;25:1,7,20; 27:18;31:17;32:7,25;33:2; 34:14,21;37:12;40:9;43:4, 15;46:5,9,19;47:17,19; 48:10,18;49:4;52:14;54:18; 55:10,18,22;56:8,10;57:2,3; 60:11,16;61:1,2;62:8,15; 66:25;68:22;69:4;70:2; 71:12,21;73:13;75:7;76:3; 77:13,18,25;78:4,21;79:3; 80:9,15;81:13;85:20;86:6, 21;88:2 cannot (20) 10:7;30:6,17;31:22; 32:14;36:8;39:3;58:15; 60:7;61:8;63:17;67:4,12; 70:7,25;71:6;75:2;78:3,7; 83:12 can't (15) 25:7;30:5;46:16;49:2; 55:19;61:10;62:6,14,21; 77:12;83:21;84:6,16;86:11, 19 capacity (1)	catch (1) 26:18 CBTs (1) 17:17 CDC (6) 71:16,17;72:5;73:4,11; 74:17 Center (2) 71:7,11 certificate (68) 12:9,10;26:14,21;29:18; 32:17,21;34:5,19;35:18,23; 36:4,9;38:8;41:9,15;43:12; 45:12;50:22;51:18;53:4; 54:11;55:7,13,13,24;56:11, 17,23,24;57:3,6,20,22,24; 58:4,11,13,23;59:5,12;60:1, 12,16,18,24;61:3,5;62:10, 11,17,18;63:25;67:1,9,19; 72:23;77:8;82:7,12,18,25; 83:4,10,17;84:2,14;86:8 certificates (19) 15:5;16:12,17;17:5; 29:20;33:7,25;38:14;42:12; 45:25;46:1,12,22;68:17; 70:12;74:11;81:8;83:19; 84:4 certification (3) 54:15,22;56:15 certified (3) 38:5,6;72:17 certifying (1) 33:22		

72:18	conversations (2)	80:19;84:9,9	DCN (3)
complaint (2)	13:6;14:18	couldn't (1)	50:12,14,20
15:10;68:2	cooperates (1)	51:15	deal (1)
complete (9)	63:8	counsel (11)	57:15
10:5,8;17:4,12;22:2,7,13;	cooperation (1)	12:23;13:7,8,9,24;14:8,	Death (8)
23:12,18	63:14	14,18;21:8;27:1;41:19	28:10;31:12;38:9;46:1,
completing (3)	copies (1)	counsel's (1)	22:50;17,21;60:11
38:8;39:13;40:23	16:8	43:21	decide (2)
completion (11)	copy (5)	counting (3)	24:23;25:4
16:21;17:3,11;33:25;	56:24;57:5;58:5;72:18;	14:3;49:12,14	decided (1)
34:4;78:25;79:11,16,22;	82:25	county (2)	55:6
80:10,16	correct (91)	30:11,11	declaration (31)
composed (1)	18:13,21,25;19:3,8,9,11,	couple (2)	15:19,22;20:7;21:6,20,24,
17:15	12,14,15,19;20:25;21:4,5;	36:18;50:11	25;22:2,7,12,19,22,25;23:3,
comprised (1)	25:16,17,19,25;26:4,5,8,9,	court (16)	8,12,18,24;24:4,13,21;25:3;
75:14	12,13;29:5,6;34:2;35:20;	8:15,20;23:25;24:5,14,	33:1;51:7;77:14;78:2,6;
computer (2)	36:24,25;37:6;38:1;41:11;	21:25;3,8;41:19;50:6;54:6;	80:25;84:20;85:13;86:14
59:16,20	42:15;44:11,14;45:4,7,8,13;	55:4;58:24;72:18;87:7;88:4	declarations (2)
Computer-Based (1)	46:3;49:21,25;50:19,23,25;	cover (1)	25:10,12
17:17	51:2,3,11,21;52:5,6;54:13,	28:15	decreed (1)
concern (1)	14,16,17;56:25;57:16;58:9,	covered (1)	55:4
86:14	23;59:5,6,8,19,22,23;60:3,	14:14	deemed (2)
Confidential (6)	25;61:19;62:3;63:4,5;	Creating (3)	66:3;74:1
41:21,24;43:23;47:11;	64:13;65:1,12;67:8,15;	77:17;83:18;84:3	defendant (2)
54:7;59:1	69:14,19;72:6;73:22,23;	current (2)	12:3,4
consider (1)	80:4;81:7;82:2,6,21;83:4,9;	11:3;59:20	defendants (7)
74:23	84:13;85:19	cursor (2)	7:15;13:7,10,24;14:9;
considers (1)	corrected (12)	47:18;49:18	19:17;43:22
70:21	47:23;48:14,25;49:8;	D	Defendants' (1)
consistent (3)	51:24;61:23;64:21;65:7,18;		62:24
66:4,20;74:2	67:20;82:19,25	data (8)	defendant's (1)
consulting (1)	correctly (17)	34:8;36:2;51:8,9,13;	27:1
40:21	29:25;32:6;33:10;35:10;	52:24;53:1;58:12	defer (1)
contained (1)	38:15,19;39:7;40:18;48:1;	date (3)	21:8
61:12	55:9;63:12;70:18;72:25;	13:17;82:16;91:22	definitely (3)
contains (7)	75:21;77:4,23;83:1	dated (1)	61:8,10;62:6
20:24;21:2;23:25;24:5,	could (16)	44:12	definition (1)
13;38:11;51:9	7:5;12:19,21;13:18,19,	day (1)	66:10
Control (1)	25:14;10;28:14;37:19;	91:22	degree (6)
50:15	39:13;41:2;51:22;53:22;		18:16,18,23;19:7,10,13

degrees (1) 19:5	42:19;43:13;55:3	10:25	7:3
delayed (2) 11:20;12:9	determines (2) 25:23;33:18	DMV (1) 30:10	during (1) 45:10
delete (1) 22:24	Dianna (1) 7:16	document (31) 20:16,20;21:14,17,22; 26:15,22;27:3,19;28:1,5,11, 20;29:8;30:14,20,25;31:19; 41:13,20,23;44:3;50:15; 54:3;58:19,22;61:15;69:10; 71:25;76:7;81:20	duties (2) 38:7;79:20
Department (14) 11:1;17:21;18:7;28:16, 23;30:8;32:3;48:5,6;63:7,9; 80:2,8,15	didn't (2) 26:18;83:24		dysphoria (1) 26:8
departments (1) 30:6	died (1) 51:1		E
deposed (2) 11:12;12:16	dies (1) 60:11	document] (1) 36:20	each (3) 8:19,21;56:15
deposition (5) 7:19;8:8;10:11;14:12; 88:16	different (6) 27:10;42:22;46:13,23; 64:8;66:14	Documentary (3) 82:20,22;84:11	Earlier (5) 33:23;35:17;61:11;66:11; 80:23
description (2) 20:24;21:2	differently (1) 17:10	documenting (1) 76:22	easier (1) 8:8
designate (1) 60:12	direct (1) 53:22	documents (8) 14:15,20,24,25;15:3; 25:13;86:7,16	education (1) 18:15
designated (8) 19:16;46:2;60:17;61:4; 62:9,16;66:15;67:16	directly (1) 67:4	doesn't (1) 84:17	EDWARD (4) 7:2;10:23;91:3,24
designation (27) 45:11;46:13,23;55:12,23; 56:10;62:11,18;64:14;65:1, 12,24;66:3,4,18,19;67:1,9; 73:12;74:1,2,11;81:8;83:9, 17;84:2,13	Director (11) 11:5;16:2;19:24;30:19, 24;37:2;75:4;78:18,22; 79:4;80:6	Doing (1) 84:23	either (3) 14:1,10;51:18
designations (1) 86:7	disagree (6) 31:7,10;35:13;38:18; 39:10;73:17	done (4) 16:25;24:1,6,11	electronic (2) 42:7;59:11
desire (1) 69:23	disavow (1) 31:19	don't (20) 13:17;20:4;22:16;36:8, 13;37:18;39:21;40:13;41:1; 44:4,17;56:14;58:22;60:9; 63:24;66:22;84:7;87:2,9,19	electronically (1) 14:8
detecting (2) 85:18,23	disclosing (1) 13:5	down (4) 8:21;49:10,23;50:11	Element (2) 51:9,13
determine (2) 34:18;55:10	disclosure (2) 20:23;62:24	dozen (1) 14:2	elements (3) 36:3;51:10;58:12
determined (7) 34:10;37:9,15;39:3;	disclosures (1) 63:4	Dr (8) 15:13,16,19,22;25:10,10, 15,16	else (3) 85:1,5;88:4
	discussed (1) 61:21	driver's (3) 29:22;65:13,19	emails (1) 14:3
	discussing (2) 31:13;51:17	duly (1)	employed (1) 18:6
	Division (1)		employees (2) 75:15,25
			enforce (2)

69:18;71:2	11:12,14;19:20;20:19;	17:23;48:18	48:11,19,21;49:10
enforcing (1)	21:16;27:3;28:4;30:20,25;	explanatory (1)	figure (1)
37:3	41:13;44:2;54:2;58:19;76:7	54:21	56:3
enlistee (1)	every (1)	extent (1)	file (22)
64:3	39:19	14:17	11:20;12:9;16:5;27:13;
enough (1)	everybody (1)	F	41:10;47:25;48:3,4,4,16;
46:6	8:9		49:1,21;51:14;52:3,6,9,12,
entail (2)	everyone (2)	facilities (1)	16,20;53:2,6;61:15
83:18;84:3	88:10,15		filed (2)
enter (2)	evidence (4)	38:5	21:6;55:18
7:6;39:6	12:11;82:20,22;84:11	fair (1)	files (1)
entire (1)	EXAMINATION (1)	58:10	27:10
36:18	8:1	fall (1)	file's (1)
entities (4)	example (2)	80:4	53:7
16:17;17:4,6,12	10:18;64:1	Family (1)	filing (1)
entrance (1)	examples (1)	55:1	87:13
29:20	82:22	far (1)	filled (1)
entry (3)	except (1)	55:10	34:8
36:22;47:21;48:12	7:23	faster (1)	fine (1)
errata (2)	Exhibit (41)	87:18	53:12
87:24;91:1	20:13,15;21:11,12;26:25;	father (1)	finish (1)
error (1)	27:2,9,23,23;33:2,4;34:22;	55:6	8:22
81:12	36:15;37:21;41:3,4;43:17,	federal (6)	first (8)
estimate (4)	19,21;44:19;53:24,25;	63:8;68:19;69:1,22;	12:15;13:9,14;29:14;
12:17;13:21,25;14:10	58:16,17;59:1,11;62:23;	70:16;71:14	35:6;81:12;83:5,10
et (1)	68:1,4;69:5,6;70:8;71:21,	fee (2)	Five (1)
91:2	23;75:7,9;76:4,5;77:13;	82:24,25	86:22
etiology (1)	81:14,18	feel (1)	five-minute (1)
25:19	exhibits (2)	23:7	53:16
Ettner (4)	15:7;27:17	female (15)	folder (1)
15:13,19;25:10,15	expected (4)	42:24;43:1,9;48:22;60:7,	27:13
evaluate (1)	20:25;21:3;23:13;63:3	13,19;61:6;62:4;64:23;	follow (3)
24:14	expedite (1)	65:8,20;67:17,20;77:1	66:23;79:13;81:5
even (1)	88:2	female' (1)	following (2)
83:5	expedited (2)	49:8	76:24;82:13
event (1)	87:10;88:8	Fetal (3)	follows (1)
16:5	expert (9)	28:9;31:12;38:9	7:3
events (2)	15:12,15,18,21;19:17,20;	few (3)	follow-up (1)
48:8;75:19	20:6,23;62:24	8:7;14:14;64:5	87:5
ever (14)	explain (2)	fifth (4)	Force (2)

18:12,20	49:10	7:2;10:23;91:3,24	71:8,11;74:20;80:2,8,15
Forces (1)	G	Great (5)	heard (1)
64:1		10:21;45:24;48:10;50:5;	40:17
form (82)	gender (19)	53:8	hearing (2)
7:23;13:11;18:1;20:11;		ground (1)	11:15;39:24
22:4;23:4,9,15;24:8,16,24;	26:4,8,11;64:8,15,23;	8:7	heighten (2)
25:5;26:14,21;30:3;31:9,15,	65:2,8,14,20;66:5,13,20;	guidance (12)	78:16;86:8
21;32:12,17,24;33:13,16,	67:20;68:11;74:3;76:22,25;	16:20;17:2,10;33:24;	heightens (2)
20;34:6,12;35:14,21,25;	77:9	34:3,17;69:2,22;73:4,11,20;	77:21;86:16
36:6,11;37:10,16;39:15;	general (2)	75:5	honorifics (1)
40:6,25;43:6;46:15;55:16;	12:23;13:8	guidelines (1)	10:17
56:1,13;57:1,7;58:14,21;	Generally (1)	81:5	hopefully (2)
60:8,14,20;61:7;62:5,13,20;	55:22	guys (1)	45:21;47:2
63:23;64:16;65:4,15;66:6,	General's (2)	53:13	hormonal (1)
21;67:2,11,22;68:21;70:1,6,	7:14;13:16	H	62:19
24;71:5;73:5,15;74:4,14;	genitalia (7)		hour (2)
75:1;77:11;78:10;80:12,18;	36:24;37:9,15;62:9,16;	handbook (14)	15:8;53:10
81:10;83:20;84:5,15;85:3;	67:5,7		however (1)
86:10,18	give (6)	27:25;28:9;31:11;34:22,	88:2
forms (4)	10:8;13:21,25;27:18;	23:35:1;36:15,23;37:20,22;	I
42:22;43:2;68:16;70:12	55:18;88:4	38:3,11,21,24	
four (4)	given (1)	Hang (2)	identification (18)
45:17;50:11;63:2;82:3	48:9	46:4;49:16	20:15;21:12;26:15,22;
fraud (12)	giving (1)	happen (2)	27:2;32:18;35:9;41:4;
77:22;78:16;85:3,6,7,15,	10:4	52:10;78:9	43:19;53:25;58:17;68:4;
18,23;86:2,9,13,17	going (23)	happened (1)	69:6;71:23;75:9;76:5;77:9;
from (26)	12:24;14:16;20:13;21:10;	48:8	81:18
10:4;12:23;13:15;18:19;	24:18;36:14,17;40:6;41:9;	hard (6)	identifier (1)
19:1;22:25;24:22;25:15,22;	42:16;45:19,22;47:1,8,9,16,	39:24;46:4;47:21;54:23;	43:7
31:19;32:11;46:16;48:11,	20;49:22;50:1;51:4;53:9;	55:21;57:8	identifies (1)
19,21;49:9,11;56:3;61:12,	62:22;73:8	having (6)	67:17
24;62:3;64:8;66:14;69:22;	Gonzalez-pagan (3)	7:3;25:9;39:23;57:8;	identify (2)
75:11;81:23	7:7;8:1,4	67:3;86:15	36:2;60:7
FromTo (1)	Gore (3)	head (2)	identifying (1)
91:4	10:13,17;91:2	9:1,1	42:3
front (3)	governmental (1)	heading (4)	identity (23)
62:25;67:3;83:13	63:22	29:15;35:3;72:12;82:5	26:4;32:22;35:19,23;
full (2)	graduate (1)	Health (15)	63:15;64:8,15,23;65:3,9,14,
10:22;82:16	19:5	11:2;17:22;18:7;28:17,	20,20;66:5,14,20;67:10,21;
further (1)	GRAY (4)	24;30:11;32:3;48:5;63:8;	

74:3;76:23;77:10;86:7,16	25:4;38:12;41:22;42:4,21;	JONES (102)	66:9
identity/sex (1)	74:21	7:12,13,24;9:18;12:24;	kept (2)
76:25	instances (1)	13:11;14:16;18:1;20:11;	57:25;58:5
II (2)	61:22	22:4,9;23:4,9,15,21;24:8,	kind (2)
45:16;77:2	instructed (2)	16,24;25:5;26:16;27:5,8,16;	46:4;81:4
III (2)	9:17;39:18	30:3;31:9,15,21;32:12,24;	KN (1)
10:23;77:3	interpose (1)	33:13,20;34:6,12;35:14,21,	10:13
illegality (7)	12:25	25;36:6,11;37:10,16;39:15;	know (19)
77:22;78:17;84:19;85:6,	interview (1)	40:5,25;41:18;43:24;46:15;	9:6,22;31:3,24;34:23;
13,14;86:13	18:3	47:13;50:6;53:17,19;54:5;	36:8,13;37:18;38:20;41:1;
Importance (1)	into (1)	55:16;56:1,13;57:1,7;58:14,	43:17;44:15;47:5;56:14;
29:15	54:6	24;60:8,14,20;61:7;62:5,13,	62:25;63:19;71:22;87:3,10
important (9)	Introduction (1)	20;63:23;64:16;65:4,15;	knowing (1)
8:18,24;32:20;35:18,22;	29:11	66:6,21;67:2,11,22;68:21;	87:24
36:2;70:4,21;71:2	investigate (1)	70:1,6,24;71:5;73:5,15;	L
include (1)	86:1	74:4,14;75:1;77:11;78:10;	
70:15	issue (3)	80:12,18;81:10;83:20;84:5,	labels (1)
incongruent (2)	16:8;79:10;80:16	15;86:10,18,23;87:4,7,15,	
86:6,15	issued (7)	17,22;88:1,13	76:25
inconsistent (3)	16:13,13,17;42:12;46:22;	jurisdiction (4)	last (6)
73:3,11,21	51:18;57:20	72:19;75:18,20;80:5	12:17;13:20,22;14:13;
incorrect (1)	item (14)	Jurisdictions (2)	31:23;52:15
78:11	34:5;35:4,8,8;36:17,19,	75:12,18	later (3)
indicate (1)	22;39:1,14;40:23;42:8,17;	just (37)	60:18;61:4;67:8
52:4	55:2;56:3	7:5,18;8:7,13;9:2;11:25;	latest (1)
indicating (1)	items (2)	14:5,13,21;18:3;20:13;	87:9
72:19	14:14;70:16	26:17;27:18;38:18;39:17;	law (4)
individual (8)	J	40:2,14;41:9,18;42:16;	8:15;37:7,13;73:21
12:8;41:16;48:12;49:24;		48:10;49:22;50:6,20;51:4,	laws (4)
51:1;72:20,23;82:21	Jaime (1)	16;52:9;54:5;56:5;58:24;	37:3;38:12;73:3,10
individuals (1)	10:13	63:25;68:24;73:8;83:7;	lawyers (1)
51:19	January (1)	85:11;86:14;87:12	9:13
individual's (1)	76:14	K	Layout (2)
72:22	John (1)		51:9,13
info (1)	7:9	Kadivar (1)	learn (2)
55:2	joined (1)	7:10	12:15,22
informant (1)	7:15	Kayla (2)	least (2)
39:5	joins (1)	10:13;91:2	45:10;61:21
Information (11)	64:4	Keeping (1)	leave (3)
18:16;23:25;24:5,13,22;			23:2;45:22;48:11

legal (3) 36:4;76:23;84:23	27:19;49:17;59:18;68:18, 25;75:5		58:13
legislature (2) 70:21,25	looked (2) 15:7;40:22	'Male' (1) 49:20	mean (11) 42:18;43:6;60:22;79:9; 80:1;81:24;84:19,21;85:6,7, 14
LG (1) 10:13	looking (4) 15:6;30:10;46:17;55:17	M	means (3) 42:19;85:18,23
license (2) 29:22,22	Looks (4) 44:6;69:15,21;83:13	man (1) 56:2	med (1) 25:22
licenses (2) 65:13,19	lost (2) 58:13;73:19	Management (1) 19:2	medical (13) 25:22;26:3,7;34:9,15; 36:10;39:4,12;40:21;55:8, 14,25;56:12
life (2) 29:17;83:11	lot (1) 27:10	Manager (1) 18:9	medications (1) 10:3
line (1) 49:13	M	many (3) 11:17;13:23;14:7	medicine (1) 19:8
lines (1) 49:14	made (5) 9:14;44:6;82:11;83:6,14	marked (20) 20:15;21:12;27:2;33:4; 41:4,21,24;43:19,23;53:25; 58:17;62:23;68:4;69:6; 71:23;75:9;76:4,5;81:13,18	member (1) 75:23
linked (1) 46:1	maintain (10) 16:6;17:6;56:23;57:5; 68:15;69:24;70:4,11,22; 71:3	marriage (1) 29:22	members (3) 75:14;76:1,2
list (2) 45:25;60:18	maintenance (10) 16:21;17:3;74:24;78:25; 79:7,11,16,22;80:11,17	match (5) 64:15;65:2,14;67:10; 73:23	memorandum (2) 44:16;61:12
listed (2) 61:2;82:19	maintenances (1) 16:25	Matt (12) 7:13,17;9:18;26:19;27:6; 39:24;42:2;47:9;53:15; 59:2;87:2,12	mention (1) 36:24
lists (2) 54:12;59:7	make (7) 8:8;9:13;40:2,14;76:17; 78:1,5	matter (7) 8:5;10:12;14:9;15:13,16, 19,22	mentioned (1) 8:3
litigation (1) 31:1	makes (1) 36:23	may (33) 9:13;10:12;13:6;18:2; 22:5,10;23:5,10,16,22;24:9, 25;25:6;30:4;31:16;32:13; 33:15,21;34:7,13;35:15; 36:1,7,12;37:11,17;39:16; 42:23;43:3;52:16;55:13,24;	merely (1) 33:8
Little (5) 16:1;26:17;39:24;53:10; 54:23	makeup (2) 62:12,19		Middle (1) 39:1
Live (1) 38:9	male (15) 42:24;43:1,9;50:18; 51:20;55:4;60:7,12,19;61:6, 24;62:3;67:7,17;77:2		midwives (3) 38:6,6,7
local (1) 16:14	male' (4) 47:24;48:15;52:1;55:6		might (2) 27:19;78:9
location (1) 33:17			mind (1) 66:9
long (2) 15:24;68:23			minimum (1) 70:15
longer (1) 40:7			minor (1)
look (6)			

81:12	name] (3)	8:25	75:1;77:11;78:10;80:12,18;
minutes (1)	47:17;50:2,3	None (1)	81:10;83:20;84:5,15;86:10,
86:22	named (1)	10:10	18
mistake (3)	55:5	normally (1)	objection (5)
82:11;83:6,14	names (2)	52:16	9:13;12:25;22:9;23:21;
Mitchell (1)	50:7;57:21	notarized (2)	43:21
7:5	NAPHSIS (11)	82:15;84:10	objections (2)
Model (3)	48:7;71:9;74:16,23;75:5,	note (8)	7:22;9:14
71:18;72:3,9	12,23;76:1,12,16;77:7	48:24;51:23;54:21;56:3,	oblong (1)
modifications (2)	Nashville (1)	5:59;12,24,25	45:22
77:21;78:15	28:24	notes (3)	obtaining (3)
modified (1)	national (8)	47:20;59:15,21	29:21;73:13;85:8
77:19	68:19;69:1,23;70:17;	November (1)	Obviously (2)
modify (2)	71:7,10,15;74:19	44:12	47:10;87:23
83:19;84:4	nation's (1)	number (11)	occasionally (1)
money (2)	74:12	15:5;41:10;44:20;45:1,5;	9:12
82:23;84:12	nationwide (6)	46:10,20;50:16,20,21;55:2	occur (1)
MONTGOMERY (2)	68:15;69:24;70:4,11,22;	numbers (1)	75:19
88:3,9	71:3	15:4	occurred (1)
month (1)	necessarily (6)	numerous (1)	33:17
91:22	58:13;63:24;66:22;83:18;	32:18	Occurring (2)
More (3)	84:3;85:25	nurse (1)	44:20;45:2
14:2;54:8;61:1	need (8)	38:5	off (1)
mortality (1)	9:21;23:7;50:7;53:11;	O	41:23
52:19	79:24;81:4;87:17;88:2		offering (8)
mother (1)	needed (2)	oath (3)	25:11,14,18,21;26:1,2,6,
39:5	29:20;87:8	8:11,13,14	10
Moving (1)	needs (2)	Object (75)	Office (56)
43:17	24:22;25:4	13:11;14:17;18:1;20:11;	7:14;11:22,24;13:8,16;
much (1)	never (1)	22:4;23:4,9,15;24:8,16,24;	16:3,13,18,22,23;17:7,13;
42:21	12:10	25:5;30:3;31:9,15,21;32:12,	19:24;28:12,17;29:3,4;
must (2)	new (2)	24;33:13,20;34:6,12;35:14,	30:12,15,19,24;31:4,8,13,
9:15;68:18	55:7;57:20	21,25;36:6,11;37:10,16;	20;32:10;33:24;34:16;37:2;
N	next (2)	39:15;40:6,25;46:15;55:16;	38:4;44:7,8,9;52:21,23;
	52:17;64:5	56:1,13;57:1,7;58:14;60:8,	57:4,25;63:20;67:14,18;
name (12)	night (1)	14,20;61:7;62:5,13,20;	68:18,25;69:21;75:3,4;
	14:13	63:23;64:16;65:4,15;66:6,	76:1;78:18,23;79:4,10,15;
	nine (2)	21;67:2,11,22;68:21;70:1,6,	80:6;81:25;82:14;85:17,22
8:3;10:22;27:18;44:17;	55:3;56:3	24;71:5;73:5,15;74:4,14;	offices (1)
47:10;50:1;60:23;61:2;	nodding (1)		75:16
72:22;82:16;91:2,3			

Oh (1) 49:16	37:22;39:14;40:23;42:8; 43:11,17;44:17;45:11,11, 14,17;46:4,9;47:25;48:7,16; 49:1,7,16,20,23;51:7;52:8; 54:16;55:2,7,12,23;56:10, 15,15;57:21;60:9,23;61:2, 17;62:9,11,12,16,18,19; 63:2;64:14;65:2,13;67:1,7, 9;68:9;73:13;74:11,15; 76:23;78:9;81:8,11;82:6,11, 17;83:4,9,17;84:2,13;87:1, 13,13	56:24;57:5,24;58:5,5,12 originally (1) 60:17 other (22) 8:19;16:17,17;17:4,6,12; 19:4;30:6,8;38:7;39:5,12; 40:22;43:2,10;54:8;63:11, 17,19,22;70:13;75:25 others (1) 43:14 otherwise (1) 39:18 ours (1) 88:7 out (3) 23:2;34:8;56:3 outlier (1) 74:12 over (6) 8:7,19;16:1;49:18;51:9; 53:10 overlap (1) 73:7 oversee (4) 29:4;30:16;44:9;67:13	37:20,21,22;38:23;44:18; 45:14,17;54:19;59:10;63:2; 68:2;72:9;73:19;76:18; 81:23;82:3 Page/Line (1) 91:4 pages (2) 54:16;56:16 paragraph (15) 29:14;33:6;63:2,15;68:3; 69:20;70:8;72:15;76:21; 77:16;78:1,5,13;80:24; 84:20 parentage (1) 29:19 parents (1) 12:12 parents' (1) 57:21 part (6) 29:16;56:17;57:12,12; 60:1;79:19 particularly (2) 8:19;77:19 parties (1) 7:21 parts (1) 57:11 party (2) 11:25;12:1 passport (3) 29:23;30:11;65:2 passports (1) 65:8 pausing (1) 40:3 PDF (4) 28:22;29:8;31:24;37:21 penalty (1) 8:16
Okay (177) 7:4,24;8:13,18;9:5,21; 10:3,11;11:3,10,14;12:5,14; 15:9;16:20;17:2,9,19;18:5; 19:4,7,16;20:16,19,24; 21:10,16,19,21,24;25:14; 26:14,24;27:14;28:4,7,11, 15,21;29:3,7,9,14;30:14,23; 31:3,6,23;32:6,16;33:5,18; 34:16,21;35:2,3,6,12,17; 36:9,16,21;37:1,23,24; 38:17,20,23,25;39:20,23; 40:8;41:2,7,8,17;42:11,16; 43:14,16,25;44:2,5,15,18; 45:16,22;46:10,18;47:1,4,8, 13,20;48:3,23;49:16;50:17; 51:4,6;52:3,8,18;53:14,15, 18,19;54:1,12,15,18,20; 55:11,20;56:6,8,15;57:13, 19;58:3,10,18;59:10,20,24; 61:11,21;62:22;63:1,2,19; 64:5,12;66:12;67:5;68:1,5, 12;69:4,9,12,20;70:8,20; 71:1,7,17,21,24;72:11,14, 15;75:10,25;76:6,16,20; 77:13,15;78:18;81:2,6,17, 19;82:3,4;83:15;85:5,10,17; 86:5,12,20,21;87:6,12,15	once (1) 84:6 one (9) 9:12;11:8,9,11,18;15:4; 21:9;61:1;69:16 ones (1) 54:8 only (3) 9:15,23;17:7 open (4) 20:12;71:22;75:7;76:3 operations (1) 67:13 opinion (12) 25:11,15,18,22;26:1,2,6, 10;60:6,9;74:15;81:3 opinions (3) 20:3,4,6 order (7) 24:22;68:14;70:10;72:18; 82:23;84:12,12 ordered (1) 88:7 orders (1) 88:5 organs (3) 60:2,6,11 original (6)	P PAGAN (48) 7:4,17;13:3,4,12,13; 14:21,23;24:17,19;26:19, 20;27:6,14,20,21;39:16,21; 40:1,11,16,19,20;42:1,6; 43:20;44:1;47:9,15;50:9, 10;53:9,14,18,21;54:9;59:2, 3;86:21;87:1,6,12,16,19,23; 88:6,11,14 page (25) 21:22;28:16,21;29:7,10; 31:24;34:22;35:1;36:14;	
Omar (11) 7:7;8:4;26:16;27:16; 40:9;55:17;57:8;66:7; 68:22;80:13;85:20			
on (97) 12:9;13:25;16:5;20:14, 17;21:8,13,21;25:19,22; 26:3,7,11,24;27:10,25;28:9, 20,21;31:11;33:6,14,16; 34:5,17;35:2,6,6;36:23;			

pending (1) 9:24	plaintiffs (10) 7:8,11;8:5;10:12;64:21; 65:7,18;83:16;84:1,9	38:13	promulgate (8) 78:20,24;79:6,8,15,21; 80:9,14
people (5) 7:6;64:13;65:1,12;74:10	Planning (1) 28:17	prepare (1) 14:11	pronouns (1) 10:16
per (6) 34:8;43:20;45:6;63:4; 67:23;71:1	please (19) 8:22;9:6,22;12:5;31:24; 36:18;37:7,13;41:5;42:25; 54:19;56:9;62:24;66:8; 75:8;76:19;77:14;79:3; 86:22	prepared (2) 38:3;44:15	prove (1) 29:18
period (1) 45:11	pm (1) 88:17	prescribed (1) 72:24	provide (10) 15:6;16:20;17:2,10,14; 20:6,10;34:4,17;52:24
perjury (1) 8:16	PMT (1) 55:6	present (1) 7:9	provided (4) 27:1,22;55:2;75:5
permit (4) 65:23;66:2,17;73:25	policies (1) 74:9	prevent (1) 10:4	provides (6) 24:21;25:3;33:24;48:7; 52:22;53:1
permits (1) 81:6	Policy (2) 28:17;74:7	previous (1) 59:19	provision (1) 69:16
permitting (2) 83:16;84:1	portion (2) 41:24;76:23	printout (3) 45:18;69:12;75:11	provisions (1) 69:17
person (30) 26:12;29:17;32:22;33:22; 35:19,24;42:4;60:10,16,22, 22;61:2;62:2,8,15;64:2,7; 65:23;66:2,10,17,25;67:6,8, 16;73:25;83:3,8;84:17;86:6	position (4) 11:8,9,11;32:15	Prior (1) 18:5	psychology (1) 19:11
persons (1) 81:7	possess (4) 19:4,7,10,13	probably (1) 40:5	public (2) 29:23;74:20
person's (9) 25:24;53:4;55:12,23; 56:11;63:21;67:5;77:8,9	possibility (1) 86:13	problem (5) 40:2,4,12;53:17;86:24	publication (2) 31:19;32:10
pertaining (2) 37:4;38:13	possible (6) 56:22;58:3;61:9;62:2; 83:3,8	procedure (1) 72:21	published (7) 28:12;30:15;31:4,7,13; 72:5;76:13
pertains (1) 63:3	potential (4) 77:21;78:16;86:9,16	procedures (1) 38:13	publishes (1) 71:18
perused (1) 36:20	power (4) 78:19,24;79:5,19	process (3) 17:23;18:4;26:11	pulled (1) 43:18
physician (1) 34:15	preface (1) 37:24	processes (2) 85:18,23	Purpose (1) 35:8
place (2) 77:20;78:15	premarked (6) 20:13;21:11;26:25;27:23; 41:3;53:23	produced (2) 12:11;43:22	purposely (1) 23:2
plaintiff (1) 12:2	preparation (1)	professional (1) 38:6	purposes (8) 32:18;34:18;52:24;63:15, 20:64:5;85:10,12
		Project (1) 18:9	put (5)
		promote (6) 68:15;69:24;70:4,10,22; 71:3	

12:9;15:4;16:5;55:6;58:8	43:15;44:4;51:23;52:14; 61:13,25;80:25	redacted (2) 47:12;50:7	77:20
Q	receipt (1) 72:17	refer (6) 10:12;42:16;47:16;64:6; 67:24;68:7	regulation (3) 37:8,14;72:24
question (19) 8:22;9:8,13,16,24,25; 14:19,22;17:9;39:19;40:18; 43:4;56:7;57:9;68:9,11; 73:18;83:23;84:8	recognize (3) 69:9;71:24;81:20	reference (2) 38:5;50:1	regulations (12) 37:3;70:14;71:19;72:4; 73:3,10;78:15,20,24;79:6, 10;81:5
questions (5) 8:25;36:18;42:3;64:6; 87:3	Recommend (1) 76:22	referenced (1) 57:14	relates (1) 38:7
quick (1) 14:13	recommendations (1) 76:18	referencing (2) 30:6,9	relating (1) 23:8
quite (1) 74:18	recommended (1) 70:16	referred (3) 39:13;68:6;75:17	remind (1) 41:19
R	recommends (1) 77:7	referring (3) 10:15;41:21;64:7	reminder (1) 39:17
Randi (1) 15:13	record (23) 7:18;9:15;16:14;33:8; 36:5,10;39:14;40:24;47:23; 48:14,19,24,24;49:7;50:21; 51:24;54:7,8;61:22;63:21; 75:16;76:24;87:2	refers (1) 63:15	repeat (19) 21:1;22:6,11;23:17;24:3; 25:1;31:17;37:12;40:9; 42:25;56:8;57:2;61:1;66:7; 68:22;70:2;78:21;83:23; 85:20
read (26) 29:25;32:6;33:10;35:10; 36:18;38:15,18,19;39:7; 41:9,22;46:6;47:22;48:1; 49:4;50:21;54:24;55:9; 56:8;63:12;70:18;72:25; 75:21;77:4,23;83:1	recorded (9) 7:22;33:12,14,16;42:23; 43:3;64:9;66:19;67:6	reflect (9) 32:21;35:19,23;61:5; 64:22;65:8,19;67:20;77:9	rephrase (6) 9:7;13:12;24:18;25:20; 30:23;52:11
reading (1) 87:11	recording (4) 43:11;74:25;75:19;82:12	regarding (3) 14:9,19;17:11	report (8) 15:12,15;38:9;44:6; 76:11,16,19;78:4
reads (4) 39:2;56:21;60:1,4	Records (81) 11:1,5,23,24;13:9;16:3,7, 9,10,22,23;17:4,7,8,11,12, 13;19:25;28:13,18;29:4; 30:20,24;31:4,8,14,20; 32:10;34:9,17;37:2,4;38:4; 39:4,12;40:22;48:6;49:12; 51:17;52:21,24;55:8,14,25; 56:12;57:4,18;58:1,7; 63:21;64:14,22;67:14,18; 68:16,18,25;69:21,25;70:5, 12,23;71:4;72:13;74:25; 75:4;77:18;78:19,23;79:1,5, 7,12,17,22;80:7,11,17;82:1; 85:17,22	regards (15) 13:10,16;16:21;33:24; 34:4;73:12;74:7,9;78:24; 79:6,11,16,21;80:10,16	reported (1) 33:8
really (1) 83:24		registers (1) 16:14	reporter (5) 8:21;41:19;50:7;87:8; 88:4
re-ask (2) 14:21;17:9		Registrar (12) 11:6;15:25;16:2;17:20, 25;18:6;19:24;37:1;42:13; 69:17;75:3;78:22	reporter's (2) 54:7;58:25
reason (8) 10:7;31:6,10,18;35:12; 38:17;39:9;69:20		Registration (9) 28:9;29:16,21;31:11; 36:23;38:14;76:12,17;77:6	Reporting (2) 28:10;31:12
recall (7)		registrations (1) 28:1	reports (4) 25:9;38:14;68:17;70:13
		regular (1) 19:23	represent (1) 8:4
		regulate (1)	

representing (5) 7:8,11,14;11:22;84:25	19:18;21:7;22:12;24:17; 27:20;28:13,19;29:1,11; 30:16;32:8,16,25;34:1;37:5, 19,25;38:23;41:2;42:8; 43:16;44:10,13;45:3,17; 46:7,14,19,24;47:1,5;48:17; 50:18,24;51:10;52:19;53:8; 54:22;55:15,22;56:20; 58:16;59:13;62:22,22; 67:14;68:12;72:7;76:14; 79:2,19;81:9;85:24;88:9	scheme (1) 77:20 school (1) 29:21 scientific (3) 25:23;26:3,7 scratch (4) 16:10;64:19;65:25;74:7 screen (8) 20:14,17;21:13;26:24; 27:9;45:20;48:11;49:17 seal (5) 56:25;57:6,25;58:6,8 sealed (4) 49:13;54:11;56:17;57:18 Sebold (1) 15:16 second (7) 21:22;28:21;44:18;54:18; 55:18;59:10;82:10 section (5) 35:7;68:8;69:13;72:12,15 security (5) 29:24;30:13;63:10;64:14, 22 Sedgwick (1) 7:16 seeing (2) 27:8,9 Senior (1) 18:9 sentence (3) 35:7;39:1;82:10 September (1) 28:25 served (2) 18:11;19:20 service (1) 18:14 Services (3)	55:2;63:11;64:4 setting (1) 8:20 seven (1) 76:19 seventh (1) 49:9 sex (86) 25:19,24;33:8,12,18;34:5, 10,18;35:4;36:22;37:8,14; 39:2,3,14;40:23;42:17,23; 43:3,11;44:21;45:2,6,11; 46:13,23;47:24;48:15;49:7; 50:17;51:19,25;52:4;54:12; 55:7,11,23;56:10;59:7;60:2, 5,11,12,17,19;61:3,5,24; 62:3,11,18;64:8,13;65:1,12, 24;66:3,4,14,18,18,19,25; 67:9;68:10;72:19;73:12,13; 74:1,2,7,11;76:23;81:7; 82:6,12,17,18,21;83:4,9,16; 84:1,13,17;86:6 shaking (1) 9:1 shall (2) 70:15;72:23 share (5) 20:14;45:20;47:2;63:21, 24 shared (2) 48:11;49:17 sharing (3) 20:17;21:14;51:5 Shayne (1) 15:16 SHEET (1) 91:1 Shew (1) 7:16 Short (2)
research (1) 52:24 reserved (1) 7:23 respects (5) 21:25;22:3,8,15,17 response (1) 25:11 responsibilities (1) 16:4 responsible (5) 68:19;69:1,22;70:17; 71:15 restate (2) 73:8;83:7 Returning (1) 38:23 returns (1) 70:13 review (3) 14:15,24,25 reviewed (8) 15:9,12,15,18,21;25:9,13; 61:11 reword (3) 22:16;24:10;40:14 right (59) 8:2;10:21;18:12,17,24;	role (1) 11:21 rotated (1) 45:23 routinely (1) 63:8 row (4) 47:17;48:11;49:10,23 rules (8) 8:7;38:12;79:14,15,21; 80:10,16,20	S	
	sake (1) 58:25 salary (1) 19:23 same (6) 8:14,23;10:18;22:9; 23:21;51:13 Samoneh (1) 7:10 Sara (1) 7:16 Sasha (1) 7:10 saying (1) 27:7		

53:20;86:25	21:1;22:11;24:3;26:16;	19:23;28:23;37:1;41:10;	stuff (1)
show (5)	27:6;39:25;40:10;49:9;	42:13;48:8;51:7;63:10,11;	85:8
21:10;45:5;46:20,25;	52:22;55:17;56:2;57:8,11;	69:17;71:18;72:3,20;73:21;	submit (1)
59:21	59:24;64:18;73:7,17,19;	75:3,15;77:16;78:22;80:3,9	84:10
showing (5)	80:14;85:20	stated (4)	submitted (1)
26:24;47:6;75:11;82:16,	source (1)	9:3;16:7;20:5;51:23	82:13
21	74:24	statement (10)	Subscribed (1)
shown (4)	sources (3)	23:13,19;30:2;35:13;	91:21
27:9;45:14;72:8;82:17	39:5,13;40:22	39:10;78:1,5,8,12;80:24	subset (1)
shows (6)	space (1)	States (16)	74:17
27:10;45:9,25;46:10;	42:21	18:12;32:2;35:7;38:2;	substance (2)
60:23;76:15	speak (25)	42:17;47:22;48:13;54:25;	12:6;13:5
signature (3)	8:19;13:9,14;25:7;28:14;	56:16;63:6;70:9;72:16;	sum (1)
21:21;42:8,11	30:6,17;31:22;32:14;40:7;	73:25;75:13,17;76:21	12:6
signed (4)	55:19;58:15;62:6;63:17;	statistical (14)	summary (1)
54:16;56:16;82:15;84:11	67:4,12;70:7,25;71:6;75:2;	44:6;47:25;48:3,4,16;	12:7
signing (1)	77:12;83:12;86:11,12,19	49:1,20;51:14;52:3,12;53:2,	summer (1)
87:11	speaking (1)	5:61:14,15	12:20
similar (1)	55:22	Statistics (18)	sure (30)
59:21	specific (1)	11:1,6;44:7,8;48:7;51:8,	21:9;22:18;24:12;25:2,
situation (1)	13:17	12:68;20;69:2,23;70:17;	21:27;20;31:18;40:2,11,15;
86:5	specifically (2)	71:8,11,15,18;72:3;74:13,	43:1;46:20;49:4;56:4,10;
six (1)	48:6;58:22	20	57:3,10;62:7;66:9;68:24;
76:18	speculation (1)	statute (9)	70:3;71:14;74:18;79:4;
Sixty-eight (1)	78:9	16:7;17:1;57:14;66:23;	80:15;83:25;84:9;85:22;
67:25	spoken (1)	67:23,24;68:6;71:2;79:13	86:23;87:22
small (2)	13:23	statutory (2)	surgery (2)
45:19;46:5	Spring (1)	77:19;78:14	68:10;73:14
social (5)	12:20	stealing (1)	surgical (1)
29:24;30:12;63:10;64:14,	stand (1)	85:8	72:21
22	74:19	stick (1)	sworn (2)
somebody (1)	standard (1)	14:5	7:3;91:21
85:1	76:24	still (3)	System (11)
someone (2)	stands (1)	38:21;52:4;55:17	18:16;42:20;59:16,21;
64:7;66:13	74:18	Stillbirth (2)	68:16;69:25;70:5,11,23;
something (3)	started (1)	31:12;38:10	71:4;74:12
9:6;34:14;84:23	8:6	stop (1)	Systems (1)
sometime (1)	State (30)	51:5	74:21
12:17	11:2,6,7;12:12;15:24;	study (1)	
sorry (20)	16:2,6;17:20,24;18:5;	77:25	

T	7:3;11:14;33:23;35:17; 52:9	together (1) 15:5	under (11) 8:11,16;10:3;29:14; 56:24;57:6,25;58:6,8; 70:14;75:12
Table (6) 44:19;45:1,9,16,25;47:5	testifying (1) 8:16	took (1) 8:14	undergraduate (1) 19:5
tables (1) 61:13	testimony (13) 10:5,8;12:6;20:1,10,25; 21:3;23:13,19,20;24:14; 25:15;63:3	track (1) 77:20	underneath (1) 80:4
talking (3) 48:19;56:4;61:14	Thanks (1) 26:19	training (3) 17:14,15,18	understand (11) 8:10,15;9:2,5;22:17;24:1, 6:45;18;47:21;83:24;84:7
tasked (2) 37:3;75:18	Theft (1) 85:16	transcript (2) 87:20;88:5	understanding (5) 18:11;25:23;26:3,7;57:9
Taylor (4) 15:16,22;25:10,16	think (4) 57:17;58:22;61:18;88:6	transcripts (1) 87:8	understood (8) 9:9,19;10:1,19;13:3; 40:19;42:2;64:10
TCA (3) 67:3;81:11;83:13	third (3) 35:6;37:20,21	transgender (12) 10:14;26:12;64:6,13,25; 65:11,23;66:2,10,17;73:25; 74:10	Undetermined (1) 54:13
Technologies (1) 18:17	Thirteen (1) 81:15	transition (1) 26:11	uniformity (6) 68:15;69:24;70:5,11,22; 71:3
Technology (1) 19:2	Thirty-four (1) 34:25	trial (1) 11:15	United (2) 18:12;75:17
teleconference (1) 17:16	those (11) 15:3;16:6,25,25;17:6; 25:13;26:18;30:5;45:6; 50:7;51:18	true (2) 10:4,8	University (1) 19:1
Tennessee (35) 7:13;11:2,7;13:15;15:25; 16:6;28:16,23,24;33:7; 37:4;38:4,8;44:20;45:2; 48:5;51:8,12;56:18;63:7; 64:3;65:23;66:1,16,23;68:7, 17,25;69:13;70:21;73:21; 80:3,9;81:6,25	three (2) 45:15;57:11	try (6) 9:7;20:14;27:14;45:19; 47:2,2	unknown (15) 42:24;43:2,9;45:12;46:2, 11,21;52:4;59:8;60:17; 61:4,24;62:3,9,16
Tennessee-issued (2) 65:13,19	Throughout (3) 10:11;29:17;75:16	trying (1) 56:2	Unknown' (1) 39:6
Tennessee's (5) 73:2,10;74:6,9;77:18	times (4) 11:17;13:23;14:2,7	turn (4) 29:7;34:21;54:18;72:9	unless (3) 9:16;39:18;40:7
term (1) 43:10	title (3) 11:4;28:8;76:11	Turning (4) 44:18;45:16;58:16;59:10	unnecessarily (1) 40:3
terms (1) 18:15	titled (3) 35:4;44:19;45:1	two (13) 11:8,11;16:1;29:7;36:17; 39:1;49:10,14;51:16,18; 61:12,21;86:15	unreadable (1) 55:5
territorial (1) 75:15	titles (1) 11:11	type (1) 59:15	up (6) 26:17;28:3;41:6;43:18; 77:25;78:4
testified (5)	today (6) 8:3,11;10:5,9;12:16;20:1	U	
	today's (1) 14:12		

update (10) 62:10;17;65:24;66:2,17; 73:25;74:10;81:7;83:16; 84:1 Upon (1) 72:17 use (6) 38:5,21;47:10;53:2; 63:25;85:12 used (4) 26:23;32:18;43:10;77:8 uses (1) 29:17 using (2) 10:16;76:24 Usually (1) 17:16	24;31:4,8,14,20;32:10; 34:16;37:2,4;38:4;44:7,8; 48:6,8;51:8,12;52:21,23; 57:4,25;63:20;67:14,18; 68:16,18,19,25;69:1,21,23, 25;70:5,12,17,23;71:4,15, 18;72:3,13;74:12,25;75:4, 16,19;78:19,23,25;79:5,7, 12,17,22;80:6,11,17;81:25; 85:17,22 voter (1) 29:21	Winemiller (2) 7:9;27:12 within (3) 75:19,25;81:11 Without (11) 13:5;53:5;55:7,14,24; 56:11;67:3;77:19;78:14; 79:23;83:12 witness (11) 11:25;19:21;39:20,23; 40:4,8,13,17;43:25;53:12; 91:3 witnesses (1) 87:11 women (1) 10:14 wondering (1) 86:15 word (5) 22:17;43:7;55:5;80:14; 85:13 words (1) 26:18 work (6) 10:24,25;23:8;24:1,6,11 works (1) 47:3 wrote (1) 62:7	Z
V	W	Y	zoom (3) 45:21;46:5;47:8 zoomed (1) 45:23
			1
			1 (3) 68:1,4;82:15 10 (3) 71:21,23;72:9 11 (2) 75:7,9 12 (3) 14:6;76:4,5 13 (3) 42:8;81:14,18 141-106018 (1) 41:10 15 (2) 53:10;68:2 1980 (2) 44:21;45:2 1984 (2) 49:24;50:4
verbally (3) 8:25;14:4,5 verification (3) 39:4;63:16;64:2 version (1) 59:19 Veterans (1) 30:12 veterans' (1) 29:23 via (1) 7:19 video (2) 7:21;17:16 videoconference (2) 7:20;8:20 Vital (77) 10:25;11:5,22,24;13:8; 16:3,5,8,10,14,23;17:7,13; 19:24;28:13,18;29:3;30:19,	wanted (1) 41:18 wanting (1) 12:9 way (2) 83:19;84:4 ways (2) 77:17;86:1 website (4) 75:12;81:23,24,25 welcome (1) 44:25 what's (7) 21:10;28:20;41:3;53:23; 62:23;76:3;81:13 Whereupon (1) 88:16 whether (6) 31:3,7;38:20;64:18; 72:21;73:12 whose (7) 45:11;60:16,23;61:2; 64:7;66:13;79:24 William (1) 91:2	year (13) 12:18,20;13:20,22;45:6; 48:9;49:23;52:15,17;59:17; 81:12;83:5,10 years (2) 16:1;45:6 yourself (1) 84:25	2
			2 (7) 20:13,15;35:4;36:22; 42:17;62:23;82:20 20 (1) 42:14 2004 (1) 59:17 2005 (1) 51:1

2005-001924 (1) 50:19 2007 (3) 28:12,25;32:11 2017 (1) 42:15 2018 (5) 44:23,24;45:3;61:18; 76:14 2019 (4) 44:13,21;52:15;61:12 2020 (1) 91:22 20th (1) 44:12 21 (2) 72:12,15 29th (2) 87:9,14 3 3 (5) 21:11,12;33:4;77:13; 82:23 34 (5) 34:22;35:1,2;36:14;38:24 343391 (2) 32:4,7 4 4 (6) 26:25;27:2,23;34:22; 36:15;37:21 4:32 (1) 88:17 416 (1) 51:9 43 (1)	45:10 48 (1) 73:24 5 5 (2) 41:3,4 57 (1) 75:15 6 6 (2) 43:17,19 68 (1) 68:7 68-3-202 (1) 69:13 68-3-203d (1) 68:8 68-3-3133 (1) 56:19 7 7 (2) 53:24,25 70 (1) 68:3 8 8 (2) 58:16,17 82 (1) 55:18 8b (1) 76:21	9 9 (3) 69:5,6;70:8
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------